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INVESTIGATION OF TITLE.

FOURTH EDITION.

INVESTIGATION OF TITLE

BEING A

PRACTICAL TREATISE AND ALPHABETICAL DIGEST OF THE LAW CONNECTED WITH THE TITLE TO LAND

With Precedents of Requisitions

BY

WILLIAM HOWLAND JACKSON AND THOROLD GOSSET

FOURTH EDITION

BY

THOROLD GOSSET, B.A., LL.M.,
of the Inner Temple, Barrister-at-Law.

"No one's misfortune is so much slighted by the Courts as his, who buys a thing in the realty and does not look into the title."—*Lord St. Leonards.*

LONDON:
STEVENS & SONS, LIMITED,
119 & 120 CHANCERY LANE, W.C. 2,
Law Publishers.

1922.

PRINTED AT READING, ENGLAND,
BY
THE EASTERN PRESS, LIMITED.

PREFACE TO THE FOURTH EDITION.

Several years have elapsed since the publication of the last edition.

My friend Mr. Howland Jackson, to whose enterprise and perseverance the Original Edition owed so much, has now retired from practice, and I have consequently to take the sole responsibility on this occasion.

In the meantime the practice of Investigation of Title has been developing along these lines:—The Purchaser's Solicitor purchases from the Law Stationer a printed set of Requisitions and forwards them to the Vendor's Solicitor. These Requisitions ask every conceivable general question about the property and neighbourhood. "Are there any telegraph posts on the property?" "What are the Local Regulations as to the keeping of pigs?" "Is there any liability for the repair of the Parish Pump?" and consequently extend to inordinate length. The Vendor's Solicitor in due course replies "I do not know," "Ditto," "Not that I am aware of;" and even when the reply is, "I will enquire," the enquiry is frequently never made. Such questions do not relate to title at all, and if they are answered, it is only out of courtesy. The answers are nearly always quite outside the knowledge of the Vendor's Solicitor; and I

hope I shall be excused for not having extended the Requisitions in this book along the lines suggested by these printed forms.

Bills embodying fundamental alterations in the Laws of Real Property have during the last few years been frequently introduced into Parliament, but they have not as yet been passed; so this edition is mainly concerned with the minor amendments in the law, which have been numerous. In this and, it is hoped, in all other respects the book has been brought up to date.

THOROLD GOSSET.

CAMBRIDGE,
April, 1922.

PREFACE TO THE FIRST EDITION.

An attempt has been made in this Work to collect in a concise and convenient form the law on various points which should be present to the mind of the conveyancer when investigating a title. It is hoped that the Book will prove useful in obviating, during the perusal of abstracts, the distraction caused by reference to authorities which are not always easily available.

The writers have adopted the plan of adding to each subject in the Alphabetical Digest precedents of requisitions. Some of these relate to matters of such frequent occurrence that they may be regarded as common form, others may be found to suit points which actually arise, while all may, it is hoped, be of use in framing or suggesting requisitions where none of the forms given are applicable.

W. H. J.
T. G.

21, Old Square, Lincoln's Inn,
October, 1898.

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LIST OF ABBREVIATIONS

IN REFERENCES TO TEXT-BOOKS.

Blackstone	Blackstone's Commentaries on the Laws of England (1st Edition).
Burton	Burton's Compendium of the Law of Real Property (1st Edition).
Co. Litt.	Coke upon Littleton (19th Edition, by Hargrave and Butler).
Cruise	Cruise's Digest of the Laws of England respecting Real Property (4th Edition, by White).
Fearne	Fearne on Contingent Remainders and Executory Devises (1st Edition).
Litt.	Littleton's Tenures.
Shep. Touchstone...	Sheppard's Touchstone of Common Assurances (7th Edition, by Preston).
Sugden	Sugden's Vendors and Purchasers of Estates (14th Edition).
W. & T.	White and Tudor's Leading Cases in Equity (8th Edition).

INVESTIGATION OF TITLE.

INTRODUCTORY.

Of the many important duties performed by solicitors, few require more skill and care than the investigation of the title to landed estates, and it is only by adopting a methodical system of perusal that even an experienced conveyancer can be sure of noticing all the points which arise upon a long abstract.

There are, it should be observed, two distinct questions to be borne in mind when perusing an abstract. First, does it show a good title? Second, if it does, can the vendor prove the title as shown?

Various methods of analysis have been suggested and recommended for facilitating the work of the conveyancer. The writers have in practice found it best to adopt a simple plan, which can be conveniently summed up in the following rules:—

(1) First glance through the abstract in order to obtain a general idea of the title with which you have to deal.

(2) Afterwards, if the length of the abstract will permit, peruse it completely at one uninterrupted sitting.

(3) Note shortly, as you proceed, each dealing with or devolution of the legal or equitable interest, and in a separate column of your paper note the points which (unless subsequently disposed of) it will be necessary to further consider and make requisitions upon.

(4) Note also events upon which the title depends, such as births, marriages and deaths, distinguishing those of which proof will be required by the requisitions.

(5) As any of the points referred to above are disposed of on the abstract, strike out the notes relating to them.

(6) See that the parcels are correct, following up step by step the descriptions in the various documents abstracted.

(7) Where the title depends upon some event not having happened (*e.g.*, a power not having been exercised), make a requisition inquiring as to such event with a view to obtaining a negative answer, and thus casting upon the vendor the responsibility of a positive statement.

(8) Verify stamps if amounts marked on abstract.

(9) Note which documents relate only to the property purchased and should be handed over, and who will retain any in respect of which acknowledgments and undertakings will be required.

The plan recommended for adoption is illustrated in the APPENDIX B. by reference to a model abstract,

followed by counsel's notes made thereon for the purpose of the preparation of opinion and requisitions.

In drawing requisitions it is convenient to have for reference a note of the subjects on which, in a title of the description being dealt with, requisitions will usually be necessary. The following suggestions embrace not only points which are, properly speaking, the subject of requisitions, but also matters which, while not strictly questions of title, are usually and conveniently inquired into by a purchaser's solicitor when sending in his requisitions.

List of usual subjects for requisitions common to various kinds of property :—

Length of title.
Assent of executors to specific devise or bequest.
Identity of parcels.
Whether walls and fences party walls and fences.
Proof of births, marriages and deaths.
Proof of state of family.
Acknowledgment by women married before 1st January, 1883.
Stamps.
Particulars delivered stamps.
Charges by will.
Death duties.
Emergency Legislation during period of Great War.
Receipt for water rate where owner and not occupier liable.
Easements.
Restrictive covenants.
Proof of wills and intestacies.
Tenancies.
Land tax.
Tithe rentcharge.

Repair of roads.
Insurance against fire.
Enrolment of disentailing deeds.
Statutory charges.
Licence of public-houses.
Apportionment of outgoings.
Necessary parties to conveyance or assignment.
Documents to be handed over.

Additional subjects peculiar to freeholds:—

Curtesy and dower.
Where intestacy after 1897, conveyance to heir-at-law necessary.
Charge under Intestates' Estates Act.

Additional subjects peculiar to copyholds:—

Custom of manor with regard to alienation and descent of property.
Custom of the manor with respect to entail.
Customary curtesy and freebench.
Lord's consent to leases where they exist.
Fines, heriots, and other manorial rights.
Charge under Intestates' Estates Act.
Name and address of steward of manor.

Additional subjects peculiar to leaseholds:—

Original lease must be abstracted.
Lessor's licence to assign, if required.
Whether covenants complied with (receipt for rent).
Any notice of want of repair?
When last painted?
Name and address of owner of reversion.

Additional subjects peculiar to sales under Settled Land Acts:—

Are trustees trustees for purposes of Settled Land Acts?
Has tenant incumbered his life estate?

If principal mansion-house to be sold, have trustees consented?

Have any terms been created under power in settlement? If so, has any money been actually raised thereunder?

Additional subjects peculiar to reversionary interests:—

Duties payable on death of tenant for life.

Evidence of payment of debts and legacies.

Require—

(a) Statement in writing by trustees that they have no notice of any dealing with property, and that they have no lien for costs or otherwise on trust funds;

(b) Authority from trustees to inquire if there is any distringas.

ALPHABETICAL DIGEST.

ABSTRACT OF TITLE.

Every document and event upon which the title depends ought to be abstracted and stated in chief by the vendor at his own expense (*a*). When a document is incorporated by reference, the incorporated document should be abstracted so far as is necessary to make the reference intelligible (*b*). But the expense of searching for documents not in the vendor's possession for the purpose of verifying the abstract must be borne by the purchaser (*c*).

Where on a sale of property in lots a purchaser has purchased two or more lots held wholly or partly under the same title, he has not the right to more than one abstract of the common title except at his own expense (*d*).

If the vendor does not deliver the abstract of title within the time specified in the conditions of sale, he cannot hold the purchaser bound to send in his objections and requisitions within the time limited for that purpose, even though it was stipulated in the conditions for sending in the objections that time in that respect should be of the essence of the contract (*e*); but this of course has no application where no time is specified for the delivery of the abstract.

(*a*) *Re Ebsworth and Tidy's Contract*, 42 Ch. D. 23, p. 34; 58 L. J. Ch. 665; 60 L. T. 841; 37 W. R. 657; 54 J. P. 199; *Re Stamford, Spalding and Boston Banking Co. and Knight's Contract*, [1900] 1 Ch. 287; 69 L. J. Ch. 127; 81 L. T. 708; 48 W. R. 244.

(*b*) See, however, *Earl of Arran* v. *Knowlesden*, [1912] 2 Ch. 141; 81 L. J. Ch. 547; 106 L. T. 758.

(*c*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (6); *Re Stuart and Olivant and Seadon's Contract*, [1896] 2 Ch. 328; 65 L. J. Ch. 576; 74 L. T. 450; 44 W. R. 610.

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (7).

(*e*) *Upperton* v. *Nickolson*, L. R. 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733.

When the abstract is not delivered the purchaser can fix a reasonable time within which the vendor shall deliver it, and failing delivery may rescind (*f*).

See VERIFICATION OF ABSTRACT.

Requisition.

Such of the deeds, wills, and deaths recited in the indenture of , 19 , as affect the property purchased must be abstracted and stated in chief. Until this is done a proper abstract has not been delivered, and the purchaser therefore reserves the right to make further requisitions until fourteen days after a proper abstract has been furnished.

ACCEPTANCE OF TITLE.

The question sometimes arises whether a purchaser has in any respect waived his right to insist upon a title in accordance with the contract. Where there has been an express waiver, no difficulty is likely to occur. The doubtful cases are those of waiver implied by conduct, and of these the taking of possession is the act in respect of which the question most commonly arises. There is a broad distinction between cases in which a contract provides that a good title shall be shown, and also provides that possession may be taken by the purchaser before the title is completed, and cases in which the purchaser takes possession without any express stipulation as to taking possession being contained in the contract. In the former case, taking possession does not of itself amount to a waiver of objections, but in the latter case taking possession with the knowledge that there are defects in the title which the vendor cannot remove amounts to a waiver of those defects, but it does not amount to a waiver of defects which the vendor can remove (*g*).

(*f*) *Compton* v. *Bagley*, [1892] 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706.

(*g*) *Re Gloag & Miller's Contract*, 23 Ch. D. 320; 52 L. J. Ch. 654; 48 L. T. 629; 31 W. R. 601.

ACKNOWLEDGMENT.

By the Fines and Recoveries Act, 1833 (*h*), a married woman was permitted by deed acknowledged to dispose of any estate which she alone, or she and her husband in her right, might have in lands of any tenure and in money subject to be invested in land; but this power did not enable her to dispose of the legal estate in copyholds (*i*) : she was also enabled by deed acknowledged to bar an estate tail (*k*). The Court may in certain cases on summary application dispense with the husband's concurrence (*l*), and when this has been done an acknowledgment is unnecessary (*m*).

By the Real Property Act, 1845 (*n*), the provisions of the Fines and Recoveries Act, 1833, were extended to executory interests, contingent remainders, and disclaimers. The Married Women's Reversionary Interests Act, 1857, known as Malins' Act (*o*), enabled married women to dispose of reversionary interests in personalty by deed acknowledged.

The method of acknowledgment before the 1st January, 1883, was, in general, before two commissioners (*p*), a memorandum of acknowledgment was indorsed on the deed, and the certificate of acknowledgment, which the commissioners were required to sign, was then filed in the manner directed by the Fines and Recoveries Act. Until such filing, the acknowledgment was of no validity (*q*); but on the certificate being filed the deed took effect from the time of the acknowledgment.

The proper evidence of the acknowledgment of a deed acknowledged before the 1st January, 1883, is an office copy of the certificate. By the Conveyancing Act, 1882 (*r*), one commissioner is substituted for two, and the memorandum

(*h*) 3 & 4 Will. 4, c. 74.
(*i*) *Ibid.* s. 77.
(*k*) *Ibid.* s. 40.
(*l*) *Ibid.* s. 91.
(*m*) *Goodchild* v. *Dougal*, 3 Ch. D. 650; 24 W. R. 960.
(*n*) 8 & 9 Vict. c. 106, ss. 6, 7.
(*o*) 20 & 21 Vict. c. 57.
(*p*) 3 & 4 Will. 4, c. 74, s. 79.
(*q*) *Jolly* v. *Handcock*, 7 Ex. 820; 22 L. J. Ex. 38; 16 Jur. (O. S.) 550.
(*r*) 45 & 46 Vict. c. 39, s. 7.

indorsed on the deed is made conclusive evidence of the acknowledgment. An acknowledgment may also be made before a judge of the High Court of Justice or a County Court judge (*s*).

As to cases in which acknowledgment is still necessary, *see* MARRIED WOMEN.

Requisition.

The memorandum of the acknowledgment by Mrs. A. B. of the deed of , 1 , must appear on the abstract [*and the office copy of the certificate must be produced*].

ACT OF PARLIAMENT.

At common law a statute had relation back to the first day of the Session of Parliament in which it was passed, unless some other day was appointed for its coming into operation; but by a statute passed in the reign of George III., on every Act passed after the 8th April, 1793, there is required to be indorsed the day, month, and year when the same received the royal assent, and this is the date of its coming into operation where no other commencement is provided. The law takes no notice of the fraction of a day, except where there are conflicting rights between subject and subject, for the determination of which it is necessary to ascertain actual priority; an Act which comes into operation on a given day becomes law as soon as that day commences (*t*).

The title of a statute is read as part of the enactment (*u*).

Public Acts require no proof; private Acts are proved by the production of a King's Printer's copy (*x*).

(*s*) 3 & 4 Will. 4, c. 74, s. 79; County Courts Act, 1888 (51 & 52 Vict. c 43), s. 184.

(*t*) The Acts of Parliament (Commencement) Act, 1793 (33 Geo. 3, c. 13); *Tomlinson* v. *Bullock*, 4 Q. B. D. 230; 48 L. J. M. C. 95; 40 L. T. 459; 27 W. R. 552.

(*u*) *Fielden* v. *Morley Corporation*, [1899] 1 Ch. 1; 67 L. J. Ch. 611; 79 L. T. 231; 47 W. R. 295.

(*x*) 8 & 9 Vict. c. 113.

ACTION.

A suit or action "is a transaction in a Sovereign Court of Justice. It is supposed all people are attentive to what passes there. . . . It is the pendency of the suit that creates the notice" (*y*). Consequently, after the issue of the writ a purchaser would take subject to such rights as might be established by the action (*z*); but the Judgments Act, 1839 (*a*), now protects purchasers who have not express notice from being prejudicially affected by an unregistered *lis pendens*.

If any action is prosecuted to judgment, such judgment is, as between the parties to the action and persons claiming under them, conclusive proof of the facts which it establishes. Before 1882, a party or privy might, in all cases, displace this result by showing that the Court which gave the judgment had no jurisdiction, but now the Conveyancing Act, 1881 (*b*), provides that an order of the High Court of Justice shall not, *as against a purchaser*, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not. The section applies to all orders made before or after the commencement of the Act, except any order which had before the 1st of January, 1882, been set aside or determined to be invalid on any ground, and except any order as regards which an action for having it set aside or determined to be invalid was pending at that date. The effect of this is to make valid all sales by the High Court (*c*), unless, having regard to the circumstances under which the order was made, it appears that it was not intended to bind any particular interest (*d*).

(*y*) *Worsley* v. *Scarborough, Earl of*, 3 Atk. 392.
(*z*) *Price* v. *Price*, 35 Ch. D. 297; 56 L. J. Ch. 530; 56 L. T. 843; 35 W. R. 386.
(*a*) 2 & 3 Vict. c. 11, s. 7. (*b*) 44 & 45 Vict. c. 41, s. 70.
(*c*) *Re Hall-Dare's Contract*, 21 Ch. D. 41; 51 L. J. Ch. 671; 46 L. T. 755; 30 W. R. 556; *Mostyn* v. *Mostyn*, [1893] 3 Ch. 376; 62 L. J. Ch. 959; 69 L. T. 741; 42 W. R. 17; 2 R. 587.
(*d*) *Jones* v. *Barnett*, [1899] 1 Ch. 611; [1900] 1 Ch. 370; 69 L. J. Ch. 242; 82 L. T. 37; 48 W. R. 278.

Judgments, orders, and other proceedings in an action are proved by the production of office copies.

See ORDER—SEARCHES.

Requisition.

As the property is being sold by the County Court, sect. 70 of the Conveyancing Act, 1881, would not seem to apply. The abstract should be amended so as to show that all the persons interested in the estate are parties to or otherwise bound by the proceedings.

ADMINISTRATOR OF CONVICT.

See CONVICTS, TRAITORS AND FELONS.

ADMINISTRATORS, SALES AND MORTGAGES BY.

Administrators derive their title from their letters of administration, and, until the grant thereof, have no title to the deceased's real or personal estate. After the grant of letters of administration their power of disposition is as follows :—

Administrators can sell, mortgage, or otherwise deal with the personal estate of the deceased even though it be specifically bequeathed, and one only of several administrators can make a title and give a good receipt to a purchaser.

Even a lapse of twenty years will not be sufficient to raise the presumption that a legal personal representative is not acting in the discharge of his duty in selling leaseholds (*e*); but the Court declined to compel a purchaser to accept a title resting on such presumptions where the testator died eighteen years before and the vendor's solicitor had admitted that all the debts were paid (*f*).

(*e*) *Re Venn and Furze's Contract*, [1894] 2 Ch. 101; 63 L. J. Ch. 303; 70 L. T. 312; 42 W. R. 440; 8 R. 220.

(*f*) *Re Verrell's Contract*, [1903] 1 Ch. 65; 72 L. J. Ch. 44; 87 L. T. 521; 51 W. R. 73.

Where, at the death of a person who died after the 31st December, 1881, there was a subsisting contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs general in any land, his administrators have power to convey the land for all the estate and interest vested in him at his death in any manner proper for giving effect to the contract (*g*).

Under the Finance Act, 1894, when the death took place on or after the 2nd August, 1894, an administrator may sell or mortgage any of the personal property over which the deceased had a general power of appointment, whether such power was exerciseable *inter vivos* or by will, and when estate duty is payable in respect of any other property passing on such death, and the persons accountable for such duty request the administrator to pay the same, he has power to sell and mortgage such property whether it be realty or personalty (*h*).

Under the Land Transfer Act, 1897 (*i*), where death takes place after the 31st December, 1897, the real estate vested in the deceased, and any real estate over which he exercised by will a general power of appointment vests in the legal personal representative as if it were a chattel real, and he can consequently sell, mortgage, or otherwise deal with it. Until letters of administration have been obtained, the legal estate probably vests in the heir-at-law; but a conveyance from the heir-at-law would not defeat the title of an administrator subsequently appointed.

The provisions of the Land Transfer Act referred to above do not apply to land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant (*k*).

Some or one only of several administrators cannot sell or transfer real estate without the authority of the Court (*l*).

(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 4.
(*h*) 57 & 58 Vict. c. 30, ss. 6, 9, and 22.
(*i*) 60 & 61 Vict. c. 65, s. 1 (1) (5).
(*k*) 60 & 61 Vict. c. 65, s. 1 (4).
(*l*) *Ibid.* s. 2 (2).

The provisions of sect. 1 of the Land Transfer Act, 1897, do not apply to trust and mortgage estates. They continue to devolve as provided by the Conveyancing Act, 1881 (*m*).

The title of an administrator, though it does not exist until the grant of administration, relates back to the time of the death both as to real estate and as to personalty (*n*).

An administrator does not succeed to any property which the deceased held as legal personal representative. Consequently when a sole or sole surviving legal personal representative dies intestate before administration has been completed, letters of administration *de bonis non* must be taken out to the original estate.

An administrator has no power to dispose by will of property vested in him as legal personal representative of a deceased person; such property passes by survivorship to the other administrators, if any, and on the decease of the last administrator fresh letters of administration *de bonis non* must be taken out, if the administration has not been completed.

An administrator cannot sell the surface of land without the minerals except with the sanction of the Court (*o*).

The appointment of administrator is proved by production of the letters of administration or by an official certificate of the grant (*p*).

See MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—TRUST ESTATE, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

Requisitions.

1. *The letters of administration granted to the vendor must be produced.*

2. *The letters of administration granted to A. B.* durante minore ætate *were only granted to him until*

(*m*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.
(*n*) *In the goods of Elizabeth Pryse (deceased)*, [1904] P. 301; 73 L. J. P. 84; 90 L. T. 747.
(*o*) Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 44 (1) & 50; *Re Wickstead's Trusts*, [1921] 2 Ch. 184.
(*p*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 69.

one of the children of the deceased attained twenty-one. It must be proved that this event has not yet happened.

ADMITTANCE.

See COPYHOLDS.

ADVERSE POSSESSION.

See LIMITATION, STATUTES OF—POSSESSORY TITLE.

ADVOWSONS.

An advowson is the perpetual right of presentation to an ecclesiastical benefice. It is real property, and should be carefully distinguished from the right of presentation on the next vacancy, usually called a next presentation, which is personal property (*q*).

Strictly speaking, the proper title to show to an advowson is 100 years. The abstract should be accompanied by a list of the presentations for that period, so as to show that the enjoyment has gone along with the title. Having regard, however, to the provisions of the Real Property Limitation Act, 1833 (*r*), a person may with safety take a title for any period during which three clerks in succession have held the benefice if the aggregate of such incumbencies amounts to sixty years; and if such time does not amount to sixty years, then such further time as with the aggregate time of such incumbencies makes up the period of sixty years. Much shorter titles are accepted in practice.

The statutory offence of simony originates with 31 Eliz. c. 6. Under this Act, if any person for a consideration

(*q*) *Rennell* v. *Bishop of Lincoln*, 7 Barn. & Cres. 113, at p. 147; 9 Dowl. & Ry. 810; 5 L. J. (O. S.) K. B. 320; 1 Cl. & F. 527; 8 Bing. 490; 1 M. & Scott, 683; 7 Bligh (N. S.) 241.

(*r*) 3 & 4 Will. 4, c. 27, s. 30.

presents to a benefice the presentation is void, and the right for that turn is forfeited to the Crown.

Although the sale of a next presentation when the benefice is vacant is not, it appears, simony, it is void at common law (*s*); but the sale of an advowson under such circumstances is not void, though it will not confer on the purchaser the right of presenting for the vacant turn (*s*).

A purchase of a next presentation made with the intention of presenting a particular person is simoniacal if the incumbent is at the point of death, but a purchase without any such intention is under similar circumstances valid. A next presentation cannot be purchased by a clergyman for the purpose of presenting himself (*t*). This applies, it should be observed, only to next presentations, and not to advowsons, and it is therefore lawful for a clergyman to purchase an estate for life in an advowson with a view to presenting himself (*u*). All transfers *inter vivos* of advowsons or next presentations made after the 31st December, 1898, are void unless the whole interest of the transferor is transferred (*x*), and an agreement to make such a void transfer is itself void (*y*). But a life interest may be reserved to the settlor in a family settlement, and a right of redemption may be reserved in a mortgage (*z*). Transfers *inter vivos* made after 1898 are void unless registered in the diocesan register within one month from the date of transfer or such extended time as the bishop may allow, and are also void unless more than twelve months have elapsed since the last institution or admission to the benefice (*a*).

Each of the following agreements, if made after 1898, is void : (1) an agreement for any exercise of a right of patronage of a benefice in favour of any particular nominee;

(*s*) *Bishop of Lincoln* v. *Wolferstan*, 1 Bla. W. 490; 3 Burr. 1504; 2 Wils. 174.
(*t*) 13 Anne, c. 13, s. 2.
(*u*) *Walsh* v. *Bishop of Lincoln*, L. R. 10 C. P. 518; 44 L. J. C. P. 244; 32 L. T. 471; 23 W. R. 829.
(*x*) The Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 1 (1).
(*y*) *Ibid.* s. 1 (6).
(*z*) *Ibid.* s. 1 (7).
(*a*) *Ibid.* s. 1 (1).

(2) an agreement on the transfer *inter vivos* of an advowson or next presentation for the re-transfer of the right; (3) an agreement on such transfer postponing payment until a vacancy, or for more than three months; (4) an agreement on such transfer for payment of interest until a vacancy, or for more than three months; (5) an agreement on such transfer for any payment in respect of the date at which a vacancy occurs; or (6) an agreement on such transfer for the resignation of a benefice in favour of any person (*b*). All these provisions with respect to transfers *inter vivos* apply to agreements with such transfers, but do not apply to transfers by operation of law, or to transfers on the appointment of new trustees where no beneficial interest passes (*c*).

An advowson may not, since the date mentioned above, be offered for sale by auction, except in conjunction with a manor or any estate in land of not less than 100 acres in the parish in which the benefice is situate, or in an adjoining parish and belonging to the same owner as the advowson (*d*).

No spiritual person can sell any advowson or right of presentation belonging to him by virtue of his office (*e*).

Requisitions.

1. *Some deed or document dealing with the whole advowson and forming a proper root of title must be abstracted. The purchaser cannot accept a mere presentation as evidence that the vendor is entitled to the advowson in fee simple.*

2. *Proper evidence as to the age of the present incumbent must be furnished to the purchaser.*

AFTER-ACQUIRED PROPERTY.

See BANKRUPTCY—SETTLEMENTS.

(*b*) The Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 1 (3).
(*c*) *Ibid.* s. 1 (6). (*d*) *Ibid.* s. 1 (2).
(*e*) The Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), s. 42.

AGE, EVIDENCE OF.

The age of a person is proved by showing the date of his birth. This may in general be done by certificate obtained from the proper registry. Where this cannot be obtained, a certificate of baptism will prove that the person was born at the date of the baptism, and the statement of the date of birth contained in the baptismal certificate, when supplemented by declarations as to the date of birth by members of the family, may be safely accepted by a purchaser (*f*).

When the actual date of birth is of vital importance to the title, it would seem that an uncorroborated declaration need not be accepted (*g*).

Recitals in deeds twenty years old at the date of the contract must be taken to be sufficient evidence of date of birth as of other facts and matters (*h*).

See BIRTHS, MARRIAGES, AND DEATHS.

Requisition.

It seems that under the will of the testator A. B., the vendor, does not become absolutely entitled to the property sold until he attains the age of twenty-five. Proper evidence that he has attained this age must be supplied to the purchaser.

AGENTS.

The Court will enforce a contract for the purchase of land made by an agent, although he be appointed merely by parol (*i*); but if an agent purchases in his own name with his own money and takes a conveyance, and then denies

(*f*) *Re Turner, Glenister* v. *Harding*, 29 Ch. D. 985; 54 L. J. Ch. 1089; 53 L. T. 528.

(*g*) *Haines* v. *Guthrie*, 13 Q. B. D. 818; 53 L. J. Q. B. 521; 51 L. T. 645; 33 W. R. 99; 48 J. P. 756.

(*h*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 2.

(*i*) *Heard* v. *Pilley*, L. R. 4 Ch. 548; 38 L. J. Ch. 718; 21 L. T. (N. S.) 68; 17 W. R. 750.

the agency, it would seem, notwithstanding doubt which has been expressed, that sect. 7 of the Statute of Frauds affords a good defence (*k*).

Persons, instead of themselves executing documents, may, and sometimes do, appoint agents to do so on their behalf. Where an instrument is employed in the appointment of such an agent it is called a power or letter of attorney.

An agent appointed to execute a deed must be appointed by deed (*l*). In other cases at common law an agent could be appointed without any special formality; but agents authorized to sign instruments creating or assigning leases and other interests in land must, by the Statute of Frauds (*m*), be appointed in writing.

In construing a power of attorney, the question is, What acts does the document, when fairly read, authorize the attorney to do? For instance, where the instrument gave express power to the attorney to purchase and sell goods, to charter vessels, and to employ agents and servants, and proceeded, "and for the purposes aforesaid, or any of them, to use the name of the company and to execute and perform any other act, matter, or thing whatsoever which ought to be done, executed or performed, or which, in the opinion of the said agent or attorney, ought to have been done, executed or performed in or about the business affairs of the company," it was held that the general words did not confer upon the agent powers at large with respect to the business affairs referred to, such as to borrow money on behalf of the company or to bind the company by a contract of loan, but only gave him such powers as might be necessary in addition to those previously specified to carry into effect the declared purposes of the power of attorney (*n*).

A trustee may appoint an attorney to execute a deed, but the power must have reference to a particular transaction.

(*k*) *James* v. *Smith*, [1891] 1 Ch. 384; 63 L. T. 524; 39 W. R. 396.
(*l*) Co. Litt. 48 b.
(*m*) 29 Car. 2, c. 3, ss. 1, 3.
(*n*) *Bryant, Powis and Bryant* v. *La Banque du Peuple*, [1893] A. C. 170, at p. 179; 62 L. J. P. C. 68; 68 L. T. 546; 41 W. R. 600; 1 R. 336.

He may not give a general power of attorney authorizing his agent to execute instruments, as it would be a delegation of his duty (*o*); and though a trustee may give his solicitor authority to receive trust money when the trust money is payable on or after the 24th of December, 1888 (*p*), he must not give his solicitor a general power to give receipts.

A tenant for life executing powers given to him by the Settled Land Acts is acting as a trustee for all the persons beneficially entitled and cannot therefore, except as regards purely ministerial acts, delegate his powers to an agent or attorney.

A statutory exception to the rule which forbids a trustee to delegate his powers was created by the Execution of Trusts (War Facilities) Act, 1914 (*q*), which permits a trustee by power of attorney to delegate to any person capable of being appointed a trustee of the trust the execution of a trust, during any period for which the trustee is engaged on war service, and a statutory declaration by the attorney that the donor of the power is engaged on war service is made sufficient evidence of the fact.

The power of delegation is extended to tenants for life by the Execution of Trusts (War Facilities) Amendment Act, 1915 (*r*). By this Act the death of the absent trustee, or his revocation of the power, does not affect the validity of the power as regards any person dealing with the attorney without actual notice of the death or revocation.

Prior to the 1st January, 1882, a married woman was incapable of executing a power of attorney (*s*), but on and after that date she has been able, whether an infant or not, to appoint by deed an attorney on her behalf for the purpose of executing any deed or doing any act which she might herself do (*t*). With this exception, a power of attorney given by an infant is void.

(*o*) *Re Hetling and Merton's Contract*, [1893] 3 Ch. 269; 62 L. J. Ch. 783; 69 L. T. 266; 42 W. R. 19; 2 R. 543.
(*p*) 51 & 52 Vict. c. 59, s. 2; 56 & 57 Vict. c. 53, s. 17.
(*q*) 5 Geo. 5. c. 13. (*r*) 5 & 6 Geo. 5. c. 70.
(*s*) *Kenrick* v. *Wood*, L. R. 9 Eq. 333; 39 L. J. Ch. 92; 19 W. R. 57.
(*t*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 40.

Documents executed under a power of attorney are usually executed in the name of the donor, but as regards such documents executed after the 31st December, 1881, the donee of a power may exercise it in his own name or that of the donor at his option (*u*).

At common law a power of attorney was, unless given for valuable consideration, liable to be revoked by the act of the donor, or his bankruptcy or lunacy, or, in the case of a female, by her marriage, and it was also revoked by the death of the donor whether given for valuable consideration or not; but attorneys and trustees acting under a power without notice of its revocation are protected by statute (*x*). After the 31st December, 1882, a power of attorney given for valuable consideration can be made irrevocable in favour of a purchaser (*y*), and such a power is not revoked by the death, marriage, lunacy or bankruptcy of the donor, or by any act done by him without the concurrence of the donee, and whether given for valuable consideration or not, it can be made irrevocable, in favour of a purchaser, for a fixed period not exceeding a year from the date of the instrument, and a power so made is not revoked by any act done within the fixed period by the donor without the concurrence of the donee, nor by the death, marriage, lunacy, or bankruptcy of the donor within that period (*z*).

An instrument creating a power of attorney may be deposited in the Central Office. It can there be inspected, and an office copy, which is made sufficient evidence of its contents, can be obtained (*a*).

A power of attorney cannot be assigned, and subject to the protection given to purchasers by the Conveyancing Act, 1882, ceases at the death of the donee of the power, whether given for valuable consideration or not.

If an agent of one party to a contract takes a commission or reward from the other party, he must account for it to

(*u*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 46.
(*x*) *Ibid.*, s. 47; 22 & 23 Vict. c. 35, s. 26; 56 & 57 Vict. c. 53, s. 23.
(*y*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 8.
(*z*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 9.
(*a*) 44 & 45 Vict. c. 41, s. 48.

his principal, who may recover it from the agent, and may also recover from the agent and the party who paid the bribe jointly or severally damages for the loss sustained by his having entered into the contract (*b*). Corrupt transactions with agents are now misdemeanours (*c*).

An agent employed to buy or sell cannot sell to his principal or buy of him without disclosing the facts. If he does the principal can rescind the contract (*d*).

Requisitions.

1. *The power of attorney given to the mortgagee to convey the last day of the term was given to him before 1st January,* 1883. *It must be shown that the mortgagor is still alive, and that the power has not been revoked.*

2. *The power to sell his real estates given by the vendor to his attorney in England was not given for valuable consideration, and though expressed to be irrevocable for a year it was given more than a year ago. A fresh irrevocable power of attorney must be executed by the vendor.*

AGREEMENTS FOR SALE.

Two separate questions have to be considered when there is any doubt as to the existence of a binding agreement for sale. (1) Has there been an acceptance identical in terms with an offer? and (2) Is there a memorandum in writing of such terms sufficient to satisfy the Statute of Frauds? If the offer and acceptance are not identical, there is no common law contract and no question of the sufficiency of the memorandum can arise.

(*b*) *Mayor, Aldermen and Burgesses of the Borough of Salford* v. *Lever*, [1891] 1 Q. B. 168; 60 L. J. Q. B. 39; 63 L. T. 658; 71 L. T. 489. *Grant* v. *Gold Exploration and Development Syndicate of British Columbia*, [1900] 1 Q. B. 233; 69 L. J. Q. B. 150; 82 L. T. 5; 48 W. R. 280.

(*c*) 6 Edw. 7, c. 34.

(*d*) *Re Cape Breton Co.*, 26 Ch. D. 221; 29 Ch. D. 795; 12 App. Cas. 652; 54 L. J. Ch. 822; 53 L. T. 181; 33 W. R. 788.

It does not follow that because all the requirements of the Statute of Frauds are complied with, there is a binding contract. That statute is a weapon of defence, not offence, and does not make any instrument a valid contract by reason of the signature if it is not such according to the good faith and real intention of the parties (*e*).

The question whether or not there is a concluded contract usually arises on agreements entered into by correspondence.

It is a question of construction whether the parties finally agreed to be bound by the terms, though they were subsequently to have a formal agreement drawn up (*f*). In ascertaining what the true construction is, all the correspondence on the subject which has passed between the parties must be taken into consideration (*g*). There may, reading some of the letters only, appear to be an offer and unconditional acceptance, yet a negotiation for an important term carried on afterwards is enough to show that the contract was not complete (*h*). The words "subject to the title being approved by our solicitor" are not infrequently used in accepting an offer. It is doubtful whether such words could affect a contract otherwise complete in itself. Probably their proper meaning is no more than that the title offered is not to be accepted without investigation, and that objections made on such investigation would be subject to the decision of a legal tribunal (*i*).

The following, with variations, are the main classes of cases in which questions arise under contracts by correspondence :—

(1) Cases in which a letter containing an offer is followed by one containing an unconditional acceptance, but referring to a formal contract proposed to be

(*e*) *Jervis* v. *Berridge*, L. R. 8 Ch. 360; 42 L. J. Ch. 518; 27 L. T. (N. S.) 436; 21 W. R. 96.

(*f*) *Rossiter* v. *Miller*, 3 App. Cas. 1152; 48 L. J. Ch. 10; 39 L. T. 173; 26 W. R. 865.

(*g*) *Hussey* v. *Horne Payne*, 4 App. Cas. 311; 48 L. J. Ch. 846; 27 W. R. 585; 41 L. T. 1.

(*h*) *Bristol, Cardiff and Swansea Aerated Bread Co.* v. *Maggs*, 44 Ch. D. 616; 59 L. J. Ch. 472; 62 L. T. 416; 38 W. R. 393.

(*i*) *Hussey* v. *Horne Payne*, *supra*.

drawn up. Here offer and acceptance form a complete contract (*k*).

(2) Cases in which the letter containing the offer is followed by one containing an acceptance conditionally on or subject to a formal contract being entered into. The conditional nature of the acceptance may either be expressly stated, or may be shown by the enclosure of a draft contract containing other terms than those offered. Here, in both cases, there is no agreement capable of being enforced, as the conditional acceptance is nothing more than a fresh offer subject to the terms of the formal contract being agreed (*l*).

(3) Cases included in the last class, subject to a formal contract being signed, the terms of which are unascertained, must be distinguished from cases in which such terms are ascertained and are identical with the terms already agreed. In such a case there is a concluded contract without the signature of the formal contract (*m*).

It should be noted that a mere indulgence to the proposer added by the acceptor, is not the introduction of such a term as will prevent the correspondence forming a concluded contract (*n*).

When the original offer is made subject to a formal contract being drawn up, it is only a conditional offer, and an unqualified acceptance cannot turn it into a contract (*o*).

The memorandum in writing of a contract for the sale of land, which is required by sect. 4 of the Statute of

(*k*) *Thomas* v. *Dering*, 1 Keen, 729; 6 L. J. (N. S.) Ch. 265; 1 Jur. 211, 427; *Bonnewell* v. *Jenkins*, 8 Ch. D. 70; 47 L. J. Ch. 758; 38 L. T. (N. S.) 81; 26 W. R. 294.

(*l*) *Crossley* v. *Maycock*, L. R. 18 Eq. 180; 43 L. J. Ch. 379; 22 W. R. 387; *Winn* v. *Bull*, 7 Ch. D. 29; 47 L. J. Ch. 139; 26 W. R. 236; *Jones* v. *Daniel*, [1894] 2 Ch. 332; 63 L. J. Ch. 562; 70 L. T. 588; 42 W. R. 687; *Lloyd* v. *Nowell*, [1895] 2 Ch. 74; 64 L. J. Ch. 744; 73 L. T. 154; 44 W. R. 43.

(*m*) *Filby* v. *Hounsell*, [1896] 2 Ch. 737; 65 L. J. Ch. 852; 12 T. L. R. 612.

(*n*) *Harris' Case*, L. R. 7 Ch. 587; 41 L. J. Ch. 621; 26 L. T. 781; 20 W. R. 690.

(*o*) *Rossdale* v. *Denny*, [1921] 1 Ch. 57; 90 L. J. Ch. 204; 124 L. T. 294; *Coope* v. *Ridout*, [1921] 1 Ch. 291; 90 L. J. Ch. 61; 124 L. T. 402; 65 S. J. 114.

Frauds (*p*) to make the contract enforceable, must contain the names or other descriptions of the parties sufficient for identification (*q*), the description of the property (which may be general) (*r*), and the other terms, such as the price (*s*). The envelope in which a letter is enclosed may supply the name of the party to whom it is addressed (*t*), and the terms may be stated generally if the Court can supply details : thus an agreement for a lease " to contain all usual covenants and provisoes " is sufficient (*u*), as is an agreement for a sale at a valuation (*x*); but where the manner of ascertaining the value (*e.g.*, arbitration) is specified, it must be adopted (*y*).

The memorandum must be signed by the party to be charged or his agent, and it is not necessary that it should be signed by the other party (*z*). The signature need not necessarily be in handwriting : it may be printed or stamped (*a*), and need not be at the end of the document (*b*). The instructions for a telegram, if in the sender's own writing, are sufficient, with the signature of the sender's name by the telegraph clerk, to bind the former (*c*).

The principle of the cases in which a printed name has been held sufficient appears to be that the document containing it has been recognized by the defendant or his agent by writing some part of it.

It is doubtful whether the signature of the solicitor of a party approving a draft agreement or deed is sufficient signature to satisfy the Statute of Frauds. It has been

(*p*) Statute of Frauds, 29 Car. 2, c. 3, s. 4.
(*q*) *Williams* v. *Lake*, 6 Jur. (N. S.) 45; 29 L. J. Q. B. 1; 1 L. T. 56; 2 E. & E. 349.
(*r*) *Cowley* v. *Watts*, 17 Jur. 172; 21 L. T. (O. S.) 97.
(*s*) *Blagden* v. *Bradbear*, 12 Ves. jun. 466; 8 R. R. 354.
(*t*) *Pearce* v. *Gardner*, [1897] 1 Q. B. 688; 66 L. J. Q. B. 457; 76 L. T. 441; 45 W. R. 518.
(*u*) *Hampshire* v. *Wickens*, 7 Ch. D. 555; 47 L. J. Ch. 243; 38 L. T. 408; 26 W. R. 491.
(*x*) *Milnes* v. *Gery*, 9 R. R. 307; 14 Ves. jun. 400.
(*y*) *Ibid.*
(*z*) *Seton* v. *Slade*, 6 R. R. 124; 7 Ves. jun. 265.
(*a*) *Saunderson* v. *Jackson*, 5 R. R. 580; 2 B. & P. 238; 3 Esp. 180.
(*b*) *Ibid.*
(*c*) *Goodwin* v. *Francis*, L. R. 5 C. P. 295; 39 L. J. C. P. 121; 22 L. T. 338.

held to be so in a case (*d*) in which, however, older authorities to the contrary (*e*) were not cited. The question in such a case would be whether the solicitor signing the draft had any authority to complete a contract on behalf of the defendant, or whether his authority was confined to approving the draft.

The terms of a memorandum may be gathered from a series of documents, such as letters, sufficiently connected (*f*). If the acceptance of an offer is conditional on a formal document being prepared, there is no concluded contract. There may, however, be a binding agreement notwithstanding a reference to a formal contract to be drawn up. Whether or not the parties have agreed to be bound notwithstanding such a reference is a question of construction. In ascertaining what the true construction is, all the correspondence on the subject which has passed between the parties must be taken into consideration (*g*).

As a contract which is not evidenced by writing in accordance with the statute is not void, but only unenforceable, the Court will enforce it when one of the parties has performed acts referable to such contract only, and thus altered the position of the contracting parties, *e.g.*, has given possession (*h*). The Court will also enforce an oral contract as to land when the fraud of the party charged has prevented its being put into writing (*i*).

The plaintiff in an action for specific performance of an agreement must show that he is and always has been ready and willing to perform his part of the bargain. Where there is a clear agreement for sale, the Court will restrain the vendor from conveying away the legal estate in breach

(*d*) *Foligno* v. *Martin*, 22 L. J. Ch. 502; 16 Beav. 586.

(*e*) *Forster* v. *Rowland*, 7 H. & N. 103; 7 Jur. (N. S.) 998; 30 L. J. Ex. 396; *Lady Thynne* v. *Earl of Glengall*, 2 H. L. C. 131; 12 Jur. 805.

(*f*) *Chapman* v. *Bluck*, 4 Bing. N. C. 187; 5 Scott, 513; 2 Jur. 206; 7 L. J. C. P. 100; 1 Arn. 15.

(*g*) *Hussey* v. *Horne-Payne*, 4 App. Cas. 311; 48 L. J. Ch. 846; 41 L. T. 1; 27 W. R. 585.

(*h*) *Ungley* v. *Ungley*, 5 Ch. D. 887; 46 L. J. Ch. 854; 37 L. T. 52; 25 W. R. 733.

(*i*) *Whitchurch* v. *Bevis*, 2 Br. C. C. 565.

of it (*k*). A receiver will not, however, be appointed except in strong cases of fraud and danger to the property (*l*).

Where a purchase goes off by reason of some default on the part of the vendor, the purchaser has a lien upon the property for any part of the purchase money paid as deposit. But where there are acts on the part of the purchaser which not only amount to delay sufficient to deprive him of the equitable remedy of specific performance, but which also make his conduct amount to a repudiation, the vendor may treat the contract as being abandoned, and become again the true owner both at law and in equity, and the purchaser not only cannot insist upon a conveyance but loses his lien on the property for the amount paid by him, and cannot recover such amount or damages for breach of contract (*m*).

A defect in the subject-matter of an agreement for sale, such as the fact that the premises, unknown to either party, were being used for immoral purposes, is not a ground for refusing specific performance (*n*).

Agreements of which a purchaser has notice relating to land contracted to be sold must not be neglected if they are in writing, as they will be binding upon him in equity unless they are voluntary. It is not usual for the agreement in writing upon which a more formal document is founded to be recited or abstracted: where, however, a recital shows that such an agreement in writing exists, it must be required to be abstracted in chief, and any variation between its terms and the subsequent document should be noticed and a requisition made thereon.

See COMPROMISE.

Requisitions.

1. *It appears from the recital in the conveyance to the vendor that there was a preliminary contract in*

(*k*) *Hadley* v. *London Bank of Scotland, Ltd.*, 3 De G. J. & S. 63.
(*l*) *Lloyd* v. *Passingham*, 16 Ves. 59.
(*m*) *Cornwall* v. *Henson*, [1899] 2 Ch. 710; 68 L. J. Ch. 749; 81 L. T. 113; 48 W. R. 42.
(*n*) *Hope* v. *Walter*, [1899] 1 Ch. 879; 68 L. J. Ch. 359; 80 L. T. 355; 47 W. R. 479.

writing between his predecessor in title and himself, the terms of which do not seem to have been fully complied with: As the purchaser has notice of this agreement, it must be abstracted in chief or a copy supplied.

2. *The post-nuptial settlement of* 19 *was made in pursuance of an ante-nuptial agreement: This agreement must be abstracted in chief.*

AGRICULTURAL HOLDINGS.

The Agricultural Holdings Acts, 1883 and 1900 (*o*), applied to any parcel of land held by a tenant (*p*), which was either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden (*q*). They did not apply to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord (*q*).

These Acts, together with the Market Gardeners' Compensation Act, 1895 (*r*), and the Agricultural Holdings Act, 1906 (*s*), which never came into operation, were repealed and substantially re-enacted by the Agricultural Holdings Act, 1908 (*t*).

The Act of 1908 gives to agricultural tenants the right against their landlords to compensation (1) for certain improvements made with the landlord's previous consent in writing (*tt*), and (2) for other improvements for which consent is not necessary, as to one of which last, however, viz., drainage, notice to the landlord is necessary previous to the work being done, and on such notice being given the landlord may execute the work himself and charge the tenant with interest not exceeding 5*l.* per cent. on the outlay, or

(*o*) 46 & 47 Vict. c. 61; 63 & 64 Vict. c. 50.
(*p*) 46 & 47 Vict. c. 61, s. 61.
(*q*) *Ibid.* s. 54.
(*r*) 58 & 59 Vict. c. 27.
(*s*) 6 Edw. 7, c. 56.
(*t*) 8 Edw. 7, c. 28.
(*tt*) 8 Edw. 7, c. 28, s. 2.

such annual instalments payable for a period of twenty-five years, and recoverable as rent, as will repay the amount and interest at 3*l.* per cent (*u*).

If the landlord refuses his consent to an improvement for which consent is necessary, the Agricultural Committee for the area may direct that the improvement shall be treated as one for which consent is not necessary (*x*). Further, compensation for improvements and also for continuous adoption of a special system of farming may also be given (*x*).

The Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*y*), applies to parcels of land of not more than two acres held by a tenant under a landlord, and cultivated as a garden or as a farm, or partly as a garden and partly as a farm, and to allotments attached to cottages (*z*). It gives the tenant on the expiration of his tenancy the right against his landlord to compensation for growing crops and fruit, fruit trees and bushes planted with the consent in writing of the landlord (*a*), and for labour expended and manure applied since the taking of the last crop (*b*), and for drains, outbuildings, pigsties, fowl houses and other structural improvements made with the consent in writing of the landlord (*c*). Special provision was made for market garden holdings by the Act of 1895 (*d*), which has now been superseded by the Agricultural Holdings Act, 1908.

No claim for compensation is allowed under the Agricultural Holdings Act, 1908, for anything in respect of which a claim for compensation is made under the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and when the provisions of the two Acts conflict, those of the last-mentioned Act are to prevail (*e*). Neither of the Acts can as regards improvements for which the landlord's con-

(*u*) 8 Edw. 7, c. 28, s. 3.
(*x*) Agriculture Act, 1920 (10 & 11 Geo. 5, c. 76).
(*y*) 50 & 51 Vict. c. 26.
(*z*) *Ibid.* s. 4.
(*a*) *Ibid.* s. 5 (a).
(*b*) *Ibid.* s. 5 (b).
(*c*) *Ibid.* s. 5 (c).
(*d*) 58 & 59 Vict. c. 27.
(*e*) 50 & 51 Vict. c. 26, s. 18.

sent is required be excluded by agreement (*f*); but although a tenant claiming compensation under the Agricultural Holdings Act is not entitled to compensation by custom or otherwise than in manner authorized by the Act, yet this does not exclude the right of a tenant to claim under an agreement outside the Act compensation for improvements in respect of which he might have claimed compensation under the Act (*g*).

The Act substituted, in the case of an agricultural tenancy from year to year, a year's notice expiring with the year of tenancy for the usual half-year's notice, unless the landlord and tenant otherwise agreed in writing (*h*).

The Tenants' Compensation Act, 1890 (*i*), which applied to tenancies whenever created, provided that where a person occupies land under a contract of tenancy with the mortgagor which was not binding on the mortgagee of such land, then the occupier should, as against the mortgager who takes possession, be entitled to any compensation which would, but for the mortgagee taking possession, be due to the occupier from the mortgagor, whether under the Acts or the custom of the country or agreement sanctioned by the Acts; and sums due for compensation and costs might be set off against rent or other sums due from the occupier in respect of the land, and recovered as compensation under the Agricultural Holdings Acts (*k*). These provisions are repealed and re-enacted by the Act of 1908 (*l*).

In the case of a tenancy from year to year, or for a term of not exceeding twenty-one years at a rack rent, the mortgagee must give the occupier six months' notice before depriving him of possession otherwise than in accordance with the contract of tenancy, and the occupier is entitled to compensation for crops and expenditure so far as not exhausted (*m*).

(*f*) 46 & 47 Vict. c. 61, s. 55; 50 & 51 Vict. c. 26, s. 5; 8 Edw. 7, c. 28, s. 5.
(*g*) *Re Pearson & I'Anson*, [1899] 2 Q. B. 618; 68 L. J. Q. B. 878; 81 L. T. 289; 48 W. R. 154; 63 J. P. 677.
(*h*) 46 & 47 Vict. c. 61, s. 33; 8 Edw. 7, c. 28, s. 22.
(*i*) 53 & 54 Vict. c. 57.
(*k*) *Ibid.* s. 2 (1). (*l*) 8 Edw. 7, c. 28, s. 12 (1), (3).
(*m*) 53 & 54 Vict. c. 57, s. 2 (2); 8 Edw. 7, c. 28, s. 12 (2).

Notice of a tenancy being notice of the terms of the lease or agreement creating it, a purchaser having such notice is considered as having notice of the whole extent of the tenant's interest, and is therefore bound to inquire as to his rights against the vendor (*n*).

The Act of 1908 gave a tenant, in addition to any compensation to which he was entitled in respect of improvements and notwithstanding any agreement to the contrary, compensation for loss or expense directly attributable to his quitting the holding which the tenant might unavoidably incur in connection with the sale or removal of his household goods, implements of husbandry, produce or farm stock used in connection with the holding in cases where he is given notice to quit without good and sufficient cause (*o*), and this was extended by the Agricultural Holdings Act, 1914, to notices to quit given in view of a sale or offering for sale, or by or at the request of the purchaser before the expiration of a year after the completion of the purchase, for any reason other than the wrongful act or default of the tenant (*p*).

Where the tenancy determines on or after the 1st of January, 1921, by reason of a notice to quit given after 20th May, 1920, the tenant, except in certain specified cases, is entitled to compensation for disturbance. The amount payable is at least one year's rent, but is not to exceed two years' rent (*q*).

Inasmuch as a purchaser will be liable at the termination of the tenancy to pay compensation for, amongst other things, erections which he might fairly assume to have been put up by the vendor, it follows that on a purchase of agricultural allotment, market, or cottage garden land, in addition to inquiries as to the existence of the charges referred to below, inquiry should be made with a view to ascertaining (1) whether any claims under the Acts have been made which are undisposed of, (2) whether any notices

(*n*) *James* v. *Lichfield*, L. R. 9 Eq. 51; 39 L. J. Ch. 248.
(*o*) 8 Edw. 7, c. 28, s. 11.
(*p*) 4 & 5 Geo. 5, c. 7.
(*q*) Agriculture Act, 1920 (10 & 11 Geo. 5, c. 76), s. 10.

have been given in respect of any of the matters referred to in the Acts, and (3) whether any, and what, improvements under the Acts are known to have been effected. A cautious purchaser will, indeed, make these inquiries before entering into his contract, but, in any case, although not strictly a question of title, it is necessary for the purchaser to obtain the information some time, and it is convenient to do so before completion.

An order of the County Court could formerly be obtained charging on the land the compensation paid under the Act (*r*). But since the 1st January, 1901, these charges are made by the Ministry of Agriculture (*s*).

Until the 1st January, 1899, no register was kept of charges made by the County Court, but since that date all charges under the Act of 1883 must be registered under the Land Charges Registration and Searches Act, 1888 (*t*); as also must charges under the Act of 1908 (*u*).

Any contract for the sale of a holding or part of a holding made on or after the 19th of August, 1919, renders void any then current notice to determine a tenancy from year to year, unless the tenant on or after the 19th of August, 1919, and before the contract for sale, agrees in writing that the notice shall be valid (*x*).

No tenancy of a holding for a term of two years or upwards granted on or after the 1st of January, 1921, can be terminated without a notice to quit given not less than one year nor more than two years before the expiration of the term (*y*), and a notice to quit a holding given on or after the 1st of January, 1921, is invalid if it purports to determine a tenancy before the expiration of twelve calendar months from the end of the then current year of the tenancy (*z*).

See FIXTURES—LAND IMPROVEMENT ACTS.

(*r*) 46 & 47 Vict. c. 61, ss. 29—32.
(*s*) 63 & 64 Vict. c. 50, s. 3; 8 Edw. 7, c. 28, s. 10.
(*t*) 51 & 52 Vict. c. 51, ss. 4, 5.
(*u*) 8 Edw. 7, c. 28, s. 19.
(*x*) Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (9 & 10 Geo. 5, c. 63).
(*y*) Agriculture Act, 1920 (10 & 11 Geo. 5, c. 76), s. 13.
(*z*) *Ibid.* s. 28.

Requisitions.

1. *Is the vendor, or are his solicitors, aware of any charge under the Agricultural Holdings Act*, 1908, *having been made in favour of any former landlord of the property? Will the vendor's solicitors, if they are able, supply the names and addresses of* (a) *the legal personal representatives of the last tenant for life*, (b) *the former tenant of the premises, in order that inquiries may be made of them on the point?*

2. *Has any claim been made by the tenant for compensation in respect of any matters or things on the farm?*

3. *Have any claims been made by the tenant for compensation in respect of unreasonable disturbance?*

4. *What* (*if any*) *improvements under the Agricultural Holdings Act, or other matters giving rise to compensation to tenants, is the vendor or his solicitor aware of?*

ALIENATION, RESTRAINT ON.

If a feoffment be made upon this condition—"that the feoffee shall not alien the land to any, this condition is void" (*a*), and any condition in a conveyance which substantially has that effect is also void, and a vendor can make a good title notwithstanding such condition (*b*). The case, however, of property settled on a married woman is an exception to this rule, and such property may be subject to a restraint on alienation while the coverture lasts. Another qualification is that an estate for life or years may be given until alienation or bankruptcy of the donee, with a gift over on the happening of such event (*c*); but such a settlement of a man's own property is void against his trustee in bankruptcy (*d*), though a limitation over in the

(*a*) Co. Litt. 222 a.
(*b*) *Bradley* v. *Peixoto*, 4 R. R. 7; 3 Ves. jun. 324.
(*c*) *Higinbotham* v. *Holme*, 19 Ves. jun. 88; 12 R. R. 146.
(*d*) *Re Pearson, Ex parte Stephens*, 3 Ch. D. 807; 35 L. T. 68; 25 W. R. 126.

event of an involuntary alienation by process of law, such as the appointment of a receiver on behalf of a judgment creditor, is valid (*e*); and in the case of a limitation in remainder or reversion, a gift over or upon alienation before the period of possession is valid (*f*). A condition merely limiting the power of alienation, *e.g.*, a gift on the condition that A. never sells out of the family, is valid (*g*).

The event on which a gift over, under a settlement by will or otherwise, comes into operation, although grammatically referring to future events, may be construed as including past events, if such inclusion is the manifest intention of the document (*h*); but this doctrine does not apply to the case of a condition in a covenant (*i*).

It should be noticed that gifts over on alienation and restraints upon alienation are always void if they infringe the rule against perpetuities.

See ANTICIPATION, RESTRAINT AGAINST—PERPETUITIES.

Requisitions.

1. *What evidence does the vendor offer that the prior estate of A. B. was determined by his being deprived of the enjoyment within the words of the will of X., deceased?*

2. *The proposed mortgage would, it seems, put an end to the life estate of A. B.; unless, therefore, he can obtain the concurrence of Mrs. B., the person entitled in remainder, the proposed advance cannot be made.*

3. *As there is a gift over to A. B. on alienation by the vendor, it is presumed that A. B. will concur in the sale. Does A. B. take any portion of the purchase-money?*

(*e*) *Re Detmold, Detmold* v. *Detmold*, 40 Ch. D. 585; 58 L. J. Ch. 495; 61 L. T. 21; 37 W. R. 442.

(*f*) *Kearsley* v. *Woodcock*, 3 Ha. 185; 8 Jur. (O. S.) 120; *Re Payne*, 25 Beav. 556; *Pearson* v. *Dolman*, L. R. 3 Eq. 315; 36 L. J. Ch. 258; 15 W. R. 120.

(*g*) *Re Macleay*, L. R. 20 Eq. 186; 44 L. J. Ch. 441; 32 L. T. 682; 23 W. R. 718.

(*h*) *Re Metcalfe, Metcalfe* v. *Metcalfe*, [1891] 3 Ch. 1; 60 L. J. Ch. 647; 65 L. T. 426.

(*i*) *West* v. *Williams*, [1899] 1 Ch. 132; 68 L. J. Ch. 127; 79 L. T. 575; 47 W. R. 308.

ALIENS.

At common law aliens were not capable of inheriting or holding any estate or interest in lands, and if any lands were purchased by an alien, the Crown was entitled to seize them. The rule applied to equitable as well as legal estates (*j*). The child of foreign parents born in England is not an alien, and the privileges of a natural-born subject have been by statute extended to (1) children born abroad of natural-born fathers; (2) the children of males whose fathers were natural-born; (3) the children of natural-born mothers; and (4) the wives of natural-born or naturalized subjects (*k*).

The status of aliens has been recently dealt with by the British Nationality and Status of Aliens Act, 1914, and the definition of a natural-born British subject is now confined within narrower limits (*l*).

An alien could be made a denizen by letters patent, whereupon he became capable of holding, but not of inheriting, land.

Since the 6th August, 1844, aliens have been able to hold land for a lease not exceeding twenty-one years for the purpose of occupation or business (*m*), and now, since the 11th May, 1870, they have, as regards holding land, been upon an equality with natural-born subjects (*n*).

An alien is, however, still under some incapacities; thus, he cannot be made a protector of a settlement (*o*).

The effect of naturalization is to make the person naturalized a British subject, and he is thenceforth subject to no disability.

Naturalization prior to the Act of 1870 is proved by certificate of a Secretary of State (*m*).

(*j*) *Sharp* v. *St. Sauveur*, L. R. 7 Ch. 343; 41 L. J. Ch. 576; 26 L. T. 142; 20 W. R. 269.
(*k*) 4 Geo. 2, c. 21; 13 Geo. 3, c. 21; 7 & 8 Vict. c. 66; 33 & 34 Vict. c. 14.
(*l*) 4 & 5 Geo. 5. c. 17
(*m*) 7 & 8 Vict. c. 66.
(*n*) 33 & 34 Vict. c. 14, s. 2.
(*o*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 32.

Requisitions.

1. *Was Mr. Müller, the predecessor in title of the vendor, an alien? If so, was he ever naturalized?*

2. *A certificate of the naturalization of Herr Braun from a Secretary of State must be produced.*

3. *Jean Legendre must join in the conveyance to the purchaser to release his estate by curtesy unless the vendor can show that he was an alien at the time of his wife's death in January,* 1870.

ALLOTMENTS AND COTTAGE GARDENS.

See AGRICULTURAL HOLDINGS.

ALTERATIONS.

See DEEDS—WILLS.

ANNUITIES AND RENTCHARGES.

A rentcharge is a rent payable out of land to a person who has no future interest or reversion in such land (*p*). The rent may be payable for life or other limited period, when it is usually referred to as an annuity charged on the land, or it may be perpetual, when it is called a rentcharge. Rentcharges payable out of freehold lands are common in Manchester and some other places in the north of England.

Where no express power of distress was reserved by the instrument creating a rentcharge, such power was, many years ago, given by statute (*q*); and now there is no longer any necessity to insert in an instrument creating a rentcharge any provisions for its recovery, as in the case of all instruments coming into operation after the 31st December, 1881, the person entitled to any annual sum charged on land has, in the absence of any contrary intention expressed

(*p*) 2 Blackstone, 42.

(*q*) 4 Geo. 2, c. 28, s. 5.

therein, the following remedies as far as they might have been conferred by the instrument under which the annual sum arises :—

(1) When unpaid for twenty-one days after time appointed for payment, to enter and distrain.

(2) When unpaid for forty days after time appointed for payment, even if no legal demand made, to enter and hold the land without impeachment of waste, and take the income until all the arrears and costs are satisfied.

(3) In the latter case to demise the land charged to a trustee for a term of years with or without impeachment of waste on trust by mortgage, sale, or demise, or receipt of income, or other reasonable means, to raise and pay the annual sum, arrears and costs (*r*).

The rule against perpetuities does not apply to these statutory powers or to express powers given for the purposes of recovering annuities or rentcharges (*s*).

In addition to the above remedies, the owner of a rentcharge can (1) apply to the Court and obtain an order to enforce the charge on the land by sale or mortgage (*t*), or (2) sue the terre-tenant for the amount owing. With regard to the last-mentioned remedy, it is to be observed that the liability of subsequent owners of the land charged does not arise by reason of the covenant for payment running with the land, as the law on the subject of covenants running with the land does not apply; the ground on which such subsequent owner is liable is as the pernor of the profits of the land; he was formerly liable to a real action for non-payment of the rentcharge, and now, since real actions are abolished, he is liable to an action for debt (*u*), and it would seem that subsequent owners are equally liable even

(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 44.

(*s*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 6.

(*t*) *Horton* v. *Hall*, L. R. 17 Eq. 437; 22 W. R. 391; *Kelsey* v. *Kelsey*, L. R. 17 Eq. 495; 30 L. T. 82; 22 W. R. 433; *Scottish Widows' Fund* v. *Craig*, 20 Ch. D. 208; 51 L. J. Ch. 363; 30 W. R. 463.

(*u*) *Thomas* v. *Sylvester*, L. R. 8 Q. B. 368; 42 L. J. Q. B. 237; 21 W. R. 912; *Searle* v. *Cooke*, 43 Ch. D. 519; 59 L. J. Ch. 259; 62 L. T. 211.

if the profits are insufficient to keep down the rentcharge (*w*).

A rentcharge is put an end to—

(1) By release. Part as well as the whole of the land can now be released without prejudice to the rights of all persons interested in the lands remaining unreleased, and not concurring in or confirming the release (*x*).

(2) By merger, through the person entitled to the rentcharge acquiring the land on which it is charged.

(3) By redemption, under the Conveyancing Act, 1881 (*y*), under which the Ministry of Agriculture may fix the amount of consideration for redemption, and on proof of payment may grant a certificate, which is conclusive, declaring the land to be freed from the charge.

(4) By discharge, under the Conveyancing Act, 1881 (*z*), which applies to a sale either by the Court or out of Court, and provides that the Court may direct or allow payment into Court of a capital sum to keep down the charge, and may declare the land freed from such charge.

(5) By expiration, where the rentcharge has been granted for a limited period.

(6) By the estate on which the rent is charged coming to an end. This will not, however, free the original grantor from liability.

Prior to the 13th August, 1859, if an annuitant released any part of the land from the annuity charged upon it, the whole annuity was gone so far as regards the charge on the land, but since that date the release from a rentcharge of part of the land charged therewith does not operate as a discharge of the whole land, but only of the part released (*a*). Where, therefore, after the 12th August,

(*w*) *Pertwee* v. *Townsend*, [1896] 2 Q. B. 129; 65 L. J. Q. B. 659; 75 L. T. 104.
(*x*) 22 & 23 Vict. c. 35, s. 10.
(*y*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 45.
(*z*) *Ibid.* s. 5.
(*a*) 22 & 23 Vict. c. 35, s. 10.

1859, the owner of land which is subject to a rentcharge sells and conveys such land in separate portions to different persons, and the person entitled to the rentcharge joins in the conveyance of one only of such portions and releases it without the concurrence of the person to whom the other portion has been conveyed, the whole of such rentcharge is not extinguished, but only a proportionate part of it can be recovered from the person to whom the unreleased portion was conveyed (*b*).

Annuities or rentcharges for life or any term of years determinable on life, granted otherwise than by will or marriage settlement after the 25th April, 1855, do not affect any lands as to purchasers, mortgagees, or creditors until registered (*c*); but an annuity, though unregistered, will bind a purchaser with notice (*d*).

A purchaser may rely upon a search at the proper office as far as regards life annuities and rentcharges created otherwise than by will or marriage settlement, but with regard to those created by will or marriage settlement and to all perpetual annuities and rentcharges, a purchaser can only rely upon the abstract being complete, and on the fact that the vendor or mortgagor, solicitor or agent, who conceals any instrument material to the title or any incumbrance from a purchaser or mortgagee with intent to defraud is guilty of misdemeanour and also liable to an action for damages (*e*).

The period within which proceedings must be taken by action or distress to enforce payment against the land is twelve years from the last payment of the rentcharge, but no arrears can be thus recovered except within six years after becoming due (*f*). These provisions do not apply to an action on a covenant to pay the annual sum, and twenty

(*b*) *Booth* v. *Smith*, 14 Q. B. D. 318; 54 L. J. Q. B. 119; 51 L. T. 742; 33 W. R. 142.
(*c*) 18 & 19 Vict. c. 15.
(*d*) *Greaves* v. *Tofield*, 14 Ch. D. 563; 50 L. J. Ch. 118; 43 L. T. 100; 28 W. R. 840.
(*e*) 22 & 23 Vict. c. 35, s. 24.
(*f*) 3 & 4 Will. 4, c. 27, ss. 3, 42; 37 & 38 Vict. c. 57, s. 1.

years' arrears can be recovered in a personal action against the covenantor (*g*).

See CHARGES BY WILL—DEATH DUTIES—LIMITATION, STATUTES OF—SEARCHES.

Requisitions.

1. *The land contracted to be sold is apparently, together with other land devised by the will of A. B., deceased, subject to a rentcharge of £ a year: The vendor must, at his own expense, either procure a release of the part of the land in question or redeem the rentcharge under the Conveyancing Act*, 1881, *s.* 45.

2. *The receipt for the last payment of the rentcharge subject to which the land is sold must be produced.*

3. *The certificate of the Ministry of Agriculture declaring the land freed from the rentcharge of £ , must be abstracted in chief and produced.*

4. *The order for redemption of the annuity of £ must be abstracted in chief and the original or office copy order and certificate of payment must be produced.*

5. *Who is the legal personal representative of A. B., the annuitant? The receipt for the last payment of A. B.'s annuity and for the apportioned part of the annuity up to the date of A. B.'s death must be produced.*

6. *Either Mrs. C. D. must release her annuity or application must be made to the court, under the provisions of sect.* 5 *of the Conveyancing Act*, 1881, *to have the land declared free from the incumbrance, and the succession duty which will be payable at Mrs. C. D.'s death must be provided for.*

7. *Is the annuitant A. B. alive or dead? If alive, he must join in the conveyance to release his annuity: If dead, his death must be proved in the usual way.*

8. *The annuity of £ charged on the property must be apportioned, and so much thereof as accrued prior to the date fixed for completion must be paid by the vendor.*

(*g*) 3 & 4 Will. 4, c. 42; *Strachan* v. *Thomas*, 12 Ad. & E. 536; 4 Per. & D. 229.

ANTE-NUPTIAL SETTLEMENTS.

See SETTLEMENTS.

ANTERIOR TITLE.

See ROOT OF TITLE.

ANTICIPATION, RESTRAINT AGAINST.

It is only in the case of the equitable or statutory separate estate of a married woman, and while she is actually covert (*h*), that any restraint against anticipation is allowed by law. A gift of property to a woman for her separate use without power of anticipation prevents her from alienating either the corpus or the income during any coverture. Prior to the Married Women's Property Act, 1882 (*i*), a restraint against anticipation of income given to a married woman was of no avail unless the income was given to her for her separate use, and a gift to her separate use was not implied from the mere existence of a restraint against anticipation (*k*).

Since the 31st December, 1881, the Court, notwithstanding that a married woman is restrained from anticipation, has had power, with her consent, to bind her interest in any property (*l*).

A restraint against anticipation does not prevent the disposition of the property by will, nor the exercise by a married woman of any power under the Settled Land Acts (*m*), and it is put an end to by divorce or judicial separation (*n*).

See ALIENATION, RESTRAINT ON.

(*h*) *Tullett* v. *Armstrong*, 9 L. J. Ch. 41; 4 Jur. 34; 4 Myl. & C. 377.
(*i*) 45 & 46 Vict. c. 75.
(*k*) *Stogdon* v. *Lee*, [1891] 1 Q. B. 661; 60 L. J. Q. B. 669; 64 L. T. 494; 39 W. R. 467; 55 J. P. 533.
(*l*) 44 & 45 Vict. c. 41, s. 39; 1 & 2 Geo. 5, c. 37, s. 7.
(*m*) 45 & 46 Vict. c. 38, s. 61 (6).
(*n*) *Munt* v. *Glynes*, 41 L. J. Ch. 639; 27 L. T. 366; 20 W. R. 823.

Requisitions.

1. *Mrs. A. B., one of the vendors, is restrained from anticipating her interest in the property sold. Is she a widow, and has she not married again? The death of her husband must be proved.*

2. *Mrs. C. D. must join in the mortgage, and an order must be obtained under the Conveyancing Act binding her interest notwithstanding the restraint on anticipation.*

APPOINTMENT OF PERSON TO CONVEY.

See VESTING ORDERS AND DECLARATIONS.

APPOINTMENT OF TRUSTEES.

See TRUSTEES.

APPOINTMENTS.

As to the execution of powers of appointment, whether general or special, the common law rule was that an intention to exercise the power must appear in the instrument by which the power was exercised, and in order to show such an intention there must be either a reference to the power or to the property subject to the power : this rule has been altered as regards general powers exercised by wills made or republished after the 31st December, 1837, wherein general devises of real estate and general bequests of personal estate are construed to include real and personal estate over which the testator has a general power of appointment (*o*), and it appears that it is not in any case necessary to have a reference to the power or property if the intention to exercise it is otherwise clear (*p*).

(*o*) 7 Will. 4 & 1 Vict. c. 26, s. 27.
(*p*) *Re Sharland*, [1899] 2 Ch. 536; 68 L. J. Ch. 747; 81 L. T. 384.

The formalities to be observed on the execution and attestation of powers must be noticed.

(1) **Powers exercisable inter vivos.** If exercised by any instrument before the 13th August, 1859, all the formalities required by the instrument creating the power must be observed (*q*). If exercised on or after that date, either all the formalities required by the instrument creating the power must be observed, or the power must be exercised by deed executed in the presence of and attested by two witnesses (*r*).

(2) **Powers exercisable by will.** If exercised by a testamentary instrument before the 1st January, 1838, all the formalities required by the instrument creating the power must be observed. If exercised by a testamentary instrument on or after that date, the instrument must be executed as a will (*s*).

In cases where a testator exercises a general power of appointment over real estate by will and dies after the 31st December, 1897, the legal estate in such real estate passes to his legal personal representative (*t*).

A married woman has always been able to exercise powers of appointment, whether by deed or will, in the same manner as if she were a *feme sole*. An infant cannot exercise over real estate a power coupled with an interest in himself, but as regards personal estate he can do so where an intention appears that the power should be exercisable during minority (*u*).

In the case of sales made after the 31st December, 1881, a purchaser is not entitled to the production or abstract of any document dated or made before the time prescribed by law, or stipulated for the commencement of the title, even though the same creates a power subsequently exer-

(*q*) *Hawkins* v. *Kemp*, 3 East, 410.
(*r*) 22 & 23 Vict. c. 35, s. 12.
(*s*) 7 Will. 4 & 1 Vict. c. 26, s. 10.
(*t*) 60 & 61 Vict. c. 65, s. 1 (1), (2).
(*u*) *Re D'Angibau*, 15 Ch. D. 228; 49 L. J. Ch. 756; 43 L. T. 135; 28 W. R. 930.

cised by an instrument abstracted in the abstract furnished to the purchaser (*x*).

Before the 1st January, 1882, powers simply collateral (that is, powers given to a person not taking any estate) could not be released; but since that date a person may by deed release or contract not to exercise a power, whether or not it be coupled with an interest (*y*), and this applies to a married woman restrained from anticipating who may release by deed unacknowledged (*z*); but a power coupled with a duty cannot be released (*a*).

If a deed executed for the purpose of exercising a power of appointment appoints to A. to the use of B., B. will take an equitable estate only, while the legal estate will pass to A.

A special power of appointment must be exercised *bonâ fide* for the end designed, otherwise the appointment is corrupt and void, and will be set aside so far as it is a fraud upon the power (*b*); therefore where a parent, in exercise of a power to appoint among children, appoints to one child on a secret understanding that such child shall re-assign a part of the fund to himself or a stranger, the appointment is void as a fraud (*c*).

Of course, a purchaser who has no notice of circumstances rendering an appointment a fraud on the power would be protected.

A power of appointment ceases on the death of the donee unless expressly given to his successor.

See Death Duties—Perpetuities.

Requisitions.

1. *The deed of appointment of* , 1857, *being executed before the* 13*th August*, 1859, *evidence must be adduced that it was executed with all the formalities required by the instrument creating the power.*

(*x*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (3).
(*y*) *Ibid.* s. 52.
(*z*) *Re Chisholm's Settlement*, [1901] 2 Ch. 82; 70 L. J. Ch. 533.
(*a*) *Re Eyre, Eyre* v. *Eyre*, 49 L. T. 529; W. N. (1883) 153.
(*b*) *Aleyn* v. *Belchier*, 1 Eden. 132.
(*c*) *Daubeny* v. *Cockburn*, 15 R. R. 174; 2 Mer. 626.

2. *It seems that A. B. has a power of charging the estate purchased with various sums of money: He must be a party to the conveyance and release this power.*

3. *A. B., deceased, had a power of charging the property contracted to be sold with an annuity in favour of his wife. Was this power ever exercised?*

4. *The power of appointment in the settlement of , 19 , given to A. B., requires exercising by a deed with two witnesses. This would appear to apply also to the deed releasing the power of revocation contained in the original appointment: the abstract does not show that the deed poll of , 19 , releasing the power over the vendor's share was thus executed; it will therefore be necessary for the vendor to show that the power of revocation has not been exercised, or to obtain the concurrence of A. B.*

5. *Mrs. B. does not appear either to have disclaimed the power of appointment vested in her by the will of A. B., deceased, or to have effectually exercised it. The power is therefore outstanding and must be released.*

APPORTIONMENT.

It often happens that land subject to a periodical payment is divided and sold to different purchasers, and the liability apportioned between the respective purchasers; it is necessary for a purchaser of any part of land so divided to see that the apportionment has been regularly made so as to bind the person in whose favour the sum is payable.

A common case in which apportionment takes place is that of tithe rentcharge, which is dealt with elsewhere (*d*). It is also frequently resorted to in the case of annuities, quit rents, customary rents payable in respect of copyhold and customary freehold property, and also in case of the rents of leasehold properties held under one lease.

(*d*) See TITHE RENTCHARGE, p. 403.

Since the 12th August, 1859, the release from a rentcharge or from a judgment of part of the hereditaments charged therewith no longer extinguishes the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge out of the hereditaments released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments unreleased and not concurring in or confirming the release (*e*).

Requisitions.

1. *The apportionment between Blackacre and Whiteacre of the annuity of* 100*l. a year to X. Y. charged thereon by the will of A. B., deceased, must be proved by production of a deed executed by X. Y. effecting a release of Whiteacre, the premises sold, from the portion thrown upon Blackacre.*

2. *The effect of the will of A. B. was to charge all the real estate devised by him with the annuity of* 500*l. payable to his widow: The indenture effecting the apportionment mentioned in the particulars of sale must be produced in order to satisfy the purchaser that Mrs. B. is bound thereby.*

3. *An apportionment binding on the lord of the manor of the customary rent referred to in the particulars as the "apportioned rent" must be proved.*

4. *Both Nos.* 1 *and* 2, *Hill Terrace, were comprised in the same lease; has there been any legal apportionment binding on the lessor of the rents and other liabilities under such lease? If so, the instrument effecting the same must be produced: If not, the lessor must join in the assignment for the purpose of releasing the premises contracted to be sold from the liabilities in respect of the other premises.*

ATTENDANT TERM.

See TERMS, ATTENDANT AND SATISFIED.

(*e*) 22 & 23 Vict. c. 35, ss. 10, 11; *Booth* v. *Smith*, 14 Q. B. D. 318; 54 L. J. Q. B. 119; 51 L. T. 742; 33 W. R. 142.

ATTORNEY, POWER OF.

See AGENTS.

AWARD.

See COPYHOLDS—INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

BANKRUPTCY.

A receiving order does not itself divest the debtor's property (*f*), but inasmuch as all property, real or personal, belonging to or vested in a bankrupt at the commencement of the bankruptcy, or acquired by or devolving on him before his discharge, vests in the official receiver as trustee until a trustee is appointed, and then in such trustee (*g*), it follows that transactions cannot safely be completed with persons against whom receiving orders have been made.

The trustee of the property of a bankrupt can sell and give a discharge. He conveys the bankrupt's property in the same manner as an ordinary trustee conveys trust property.

The production of an office copy of the order of adjudication or of the *London Gazette* containing notice thereof, is sufficient evidence of the order having been duly made and of its date (*h*). The appointment of a trustee is proved by a certificate of the Board of Trade (*i*).

Any settlement (by which is meant conveyance or transfer) of property not being (1) a settlement made before and in consideration of marriage, or (2) one made in favour of a

(*f*) *Rhodes* v. *Dawson*, 16 Q. B. D. 548; 55 L. J. Q. B. 134; 34 W. R. 240.

(*g*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 20 (1), 44; Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 53, (1) (2) and (3); *Ex parte Board of Trade, Re Parker*, 15 Q. B. D. 196; 54 L. J. Q. B. 372; 52 L. T. 670; 33 W. R. 262.

(*h*) Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 137.

(*i*) Bankruptcy Act, 1914, s. 143.

purchaser or incumbrancer in good faith and for valuable consideration, or (3) a settlement made on or for the wife or children of the settlor of property which has accrued to him after marriage in right of his wife, is void against the trustee in the bankruptcy if the settlor become bankrupt within two years after the date of the settlement, and if the settlor become bankrupt at any subsequent time within ten years after the date of the settlement, is void unless the parties claiming under the settlement can prove that the settlor was, at the time of making it, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on its execution (*k*); but a voluntary settlement is not void against the settlor's trustee in bankruptcy from its date, but only from the time when his title accrues, so that if before that time the property comprised in the settlement has been sold *bonâ fide* to a purchaser for value, the title of the purchaser will be good as against the trustee (*l*). In order to constitute a person a purchaser within this exception it is not necessary that money should be given; the release of a right or the compromise of a claim would be sufficient (*m*).

Any covenant or contract in consideration of marriage for the future settlement on the settlor's wife or children of property wherein the settlor had no interest at the date of his marriage, not being property in right of his wife, is, on his becoming bankrupt before the property is actually transferred, void against the trustee in bankruptcy (*n*).

Onerous property may be disclaimed by a trustee in bankruptcy (*o*).

The trustee can exercise a general power of appointment vested in the bankrupt (*p*), and may deal with the property to which the bankrupt is beneficially entitled as tenant in

(*k*) 46 & 47 Vict. c. 52, s. 47; Bankruptcy Act, 1914, s. 42.
(*l*) *Re Carter and Kenderdine's Contract*, [1897] 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484.
(*m*) *Re Pope, Ex parte Dicksee*, [1908] 2 K. B. 169; 77 L. J. K. B. 767; 98 L. T. 775; 15 Manson, 201.
(*n*) Bankruptcy Act, 1883, s. 47; Bankruptcy Act, 1914, s. 42.
(*o*) See under DISCLAIMER, at p. 135; Bankruptcy Act, 1914, s. 54.
(*p*) Bankruptcy Act, 1914, s. 55 (4).

tail (*q*). He may also deal with the bankrupt's copyhold and customary property without being admitted, and his appointee is to be admitted thereto (*r*).

Property held by a bankrupt upon trust for any other person does not pass to the trustee in bankruptcy (*s*).

When an adjudication is annulled, all sales of property by the official receiver, trustee, or court are valid, but the property of the debtor who was adjudicated bankrupt vests in such person as the court may appoint, or in default of any such appointment, reverts to the debtor on such terms and subject to such conditions, if any, as the court may declare by the order (*t*). This provision operates only as between the debtor on the one hand and the trustee or other person claiming title under the bankruptcy on the other, and it confers on the debtor, as from the date of annulment, a good title to his property, so that he may convey and give a good discharge without the concurrence of the trustee, but it does not affect the titles of other persons claiming independently, *e.g.*, under a forfeiture clause (*u*).

Conveyances and assignments by persons who have committed an act of bankruptcy before the date of the receiving order to persons having at the time no notice of any available act of bankruptcy committed by the bankrupt before that time, and dealing *bonâ fide* for valuable consideration, are protected by the Act (*x*), even when such transactions are themselves acts of bankruptcy (*y*); but a purchaser who after adjudication, even without notice thereof, pays his money to the bankrupt is not protected (*z*); and a person who, with notice that a debtor has committed an act of bankruptcy, deals with him, does so subject to the risk of a petition being presented within three months and an adjudication ensuing.

(*q*) Bankruptcy Act, 1914, s. 55 (5).
(*r*) *Ibid.* s. 48 (4). (*s*) *Ibid.* s. 38 (1). (*t*) *Ibid.* s. 28.
(*u*) *Re Metcalfe, Metcalfe* v. *Metcalfe*, [1891] 3 Ch. 1; 60 L. J. Ch. 647; 65 L. T. 426.
(*x*) Bankruptcy Act, 1914, s. 45.
(*y*) *Shears* v. *Goddard*, [1896] 1 Q. B. 406; 65 L. J. Q. B. 344; 74 L. T. 128; 44 W. R. 402.
(*z*) *Ex parte Rabbidge, Re Pooley*, 8 Ch. D. 367; 38 L. T. 663; 26 W. R. 646.

An undischarged bankrupt could not before 1st April, 1914, even before the intervention of the trustee in bankruptcy, convey real estate acquired after the bankruptcy to a *bonâ fide* purchaser or mortgagee for value, so as to give a good title to such purchaser as against the trustee (*a*); but until the trustee intervenes all transactions of a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value in respect of his after-acquired leasehold property, were valid against the trustee (*b*), and the same rules applied with regard to the bankrupt's personal estate (*c*), and now apply to the bankrupt's real estate also (*d*). If such estate consists of a chose in action, the trustee can, by giving proper notice to the holder of the fund, or by a stop-order where necessary, perfect his title so as to defeat a prior assignee (*e*).

The discharge of a bankrupt under the Act of 1883 or 1914 is proved by an office copy of the order of discharge.

The Bankruptcy Act, 1914, was merely a re-enactment of the earlier Act of 1883, embodying the subsequent amendments to the latter Act.

Questions arising under Bankruptcy Acts prior to that of 1883 are becoming every year of less practical importance. Lapse of time, and in many cases recitals in documents twenty years old, obviate the necessity of inquiries which might otherwise be expedient. The Acts of 1849, 1861, and 1869 provided that the freehold and leasehold (and under the Act of 1869 copyhold) property of the bankrupt at the time of his bankruptcy, or obtained before its close, should vest in the official assignee under the Act of 1849, the creditor's assignee when appointed under the Act of 1861, and the trustee when appointed under the Act of 1869, and

(*a*) *Re New Land Development Association and Gray*, [1892] 2 Ch. 138; 61 L. J. Ch. 323; 66 L. T. 404; 40 W. R. 295; *Bird* v. *Philpott*, [1900] 1 Ch. 822; 69 L. J. Ch. 487; 82 L. T. 110; 7 Manson, 251.

(*b*) *Re Clayton and Barclay's Contract*, [1895] 2 Ch. 212; 64 L. J. Ch. 615; 72 L. T. 764; 43 W. R. 549; 59 J. P. 489; 13 R. 556.

(*c*) *Cohen* v. *Mitchell*, 25 Q. B. D. 262; 59 L. J. Q. B. 409; 63 L. T. 206; 38 W. R. 551; 7 Morrell, 207.

(*d*) 3 & 4 Geo. 5, c. 34, s. 11; 4 & 5 Geo. 5, c. 59, s. 47.

(*e*) *Re Beall, Ex parte Official Receiver*, [1899] 1 Q. B. 688; 68 L. J. Q. B. 462; 80 L. T. 267.

until his appointment, in the registrar (*e*). Under the Acts of 1849 and 1861, the copyhold property of the bankrupt, though not vesting in the assignees, could be sold by the court, the sale being followed by admittance, while under the Act of 1869 the trustee could dispose of copyholds without being admitted (*f*).

An order of adjudication was proved by production of an office copy order or a copy of the *London Gazette* containing the announcement (*g*). The appointment of official and creditors' assignees and trustee respectively, under the Acts of 1849, 1861, and 1869, was proved by an office copy certificate of appointment (*h*), and the bankrupt's discharge, in similar manner to a discharge under the Act of 1914, by production of an office copy of the order (*i*).

See VENDORS AND PURCHASERS, BANKRUPTCY OR DEATH OF, BEFORE COMPLETION.

Requisition.

1. *The adjudication in bankruptcy of A. B., and the appointment of the vendor C. D., trustee in such bankruptcy, must be proved by the certificate of the Board of Trade of the appointment of the latter.*

2. *The settlement of , 19 , appears to have been a voluntary one, and A. B. has, it is understood, been since adjudicated bankrupt: The concurrence of his trustee in bankruptcy, or a release of such trustee's claim, must be obtained at the vendor's expense.*

3. *The conveyance of , 19 , to C. D., appears to have been executed by A. B., after the act of bankruptcy on which he was subsequently adjudicated, though*

(*e*) Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), ss. 141, 142; Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 117, 161; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 15, 17, 83.

(*f*) Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 22.

(*g*) Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), ss. 236, 240; Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 191, 203; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 10, 81, 107.

(*h*) Bankruptcy Act, 1849 (12 & 13 Vict. c. 106), ss. 102, 236; Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ss. 123, 203; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 18, 107.

(*i*) Bankruptcy Act, 1861 (24 & 25 Vict c. 134), ss. 161, 203; Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 69, 107.

before the date of the receiving order: What evidence does the vendor offer (a) *that the transaction was entered into* bonâ fide *and for valuable consideration?* (b) *that C. D. had no notice at the time of any available act of bankruptcy committed by A. B.?*

4. *The vendor appears to have been adjudicated bankrupt. It must be proved that he has obtained his discharge before the date referred to.*

BARGAIN AND SALE.

See ENROLMENT—RELEASE.

BASE FEE.

See ENTAIL.

BIRTHS, MARRIAGES, AND DEATHS.

On most abstracts appear births, marriages, and deaths, which form essential links in the title. The question arises in what cases proof of these events is to be called for, and of what such proof when called for should consist: Strictly, proof should (unless barred by contract) be required in all cases except where the event to be proved appears by recital in a deed dated upwards of twenty years previously to the date of the contract (*k*).

The fact, however, that the proof is in all cases at the purchaser's expense makes it impracticable to act up to this standard, and in practice, recitals in recent deeds are treated as sufficient evidence of the facts stated.

The usual evidence consists of certified extracts from the register kept in accordance with the Births and Deaths

(*k*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 2.

Registration Acts, 1836 to 1874 (*l*), and this is evidence not merely of the fact of birth before the date of registration but also of the actual date of birth (*m*). The fact of birth, marriage or death (though not as a rule the time or order of birth or death) may also be proved by extracts from parochial registers of baptisms, marriages, and burials, and deaths may also be proved by extracts from the register established by the Burial Act, 1853 (*n*). Death may also be proved by the production of probate or letters of administration.

In some cases (*e.g.*, where a name is a common one, or where in case of an alleged death the person might possibly still be alive, or where the exact date of death is of importance), it is expedient to require a statutory declaration.

When neither certificates nor recitals in deeds are procurable, declarations by members of the family and entries in family Bibles and other books made by such members, and inscriptions on tombstones, may be accepted as proving descent. This and any similar evidence which may under exceptional circumstances be accepted as proof of births, marriages and deaths, on specified dates, should, where possible, be corroborated by statutory declaration.

There is a presumption when a man has not been heard of for seven years that he is dead (*o*), but there is no presumption of death without issue (*p*).

The expenses of searching for, procuring, making, verifying, and producing certificates not in the vendor's possession are, in the absence of special stipulations, now borne by a purchaser (*q*).

Requisition.

1. *The birth* [*marriage or death*] *of A. B. must be proved in the usual manner by production of certificate*

(*l*) 6 & 7 Will. 4, c. 86; 7 Will. 4 & 1 Vict. c. 22; 21 & 22 Vict. c. 25; 37 & 38 Vict. c. 88.

(*m*) *In the Estate of Goodrich, Payne* v. *Bennett*, [1904] P. 138; 73 L. J. P. 33; 90 L. T. 170; 20 T. L. R. 203.

(*n*) 16 & 17 Vict. c. 134, s. 8.

(*o*) *Re Rhodes, Rhodes* v. *Rhodes*, 36 Ch. D. 586; 56 L. J. Ch. 825; 57 L. T. 652.

(*p*) *Re Jackson, Jackson* v. *Ward*, [1907] 2 Ch. 354; 76 L. J. Ch. 553.

(*q*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (6).

of birth [*baptism, marriage, death or burial, as the case may be*].

2. *A pedigree showing the present state of the family of A. B., deceased, should be supplied to the purchaser, and should be verified by statutory declaration by a member of his family exhibiting certificates of the births, marriages and deaths.*

3. *Probate of the will of the testator A. B. does not appear to have been produced with the other documents: his death must therefore be proved by certificate.*

BOROUGH-ENGLISH.

Lands subject to the custom of Borough-English, so called in distinction to the Norman custom of primogeniture, devolve, on the death of the ancestor, on the youngest instead of the eldest son. The custom extends in some manors to collaterals (*r*). Lands held under this and other burgage tenures were as a rule by custom devisable by will long before other land could be so transmitted.

According to Bacon's Abridgment and some other authorities, the widow was entitled to the whole of her husband's land in dower, but it would appear that this was not part of the custom of Borough-English, but only special custom. Dower out of land subject to the custom of Borough-English is affected by the Dower Act, 1833 (*s*), in similar manner to freehold land not so subject.

See DOWER AND FREEBENCH.

Requisitions.

1. *The land contracted to be sold by C. D. appears to be subject to the custom of Borough-English: Evidence must therefore be produced to show that C. D. was the youngest or only son of A. B. deceased.*

(*r*) *Muggleton* v. *Barnett*, 2 H. & N. 653; 4 Jur. (N. S.) 139; 27 L. J. Ex. 125; 30 L. T. 247; 6 W. R. 182.
(*s*) 3 & 4 Will. 4, c. 105.

2. *The land is stated to be subject to the custom of Borough-English, and the title is adduced on that footing: What evidence does the vendor offer of the accuracy of the statement?*

BOUNDARIES.

Fences.—Where a hedge or ditch separates adjoining fields the presumption is that the hedge is the property of the owner of the field in which the ditch is not; the origin of this presumption being that a man making a ditch would cut it at the extremity of his own land, and would throw the soil dug out on his own land, and plant the hedge on such soil (*t*). The presumption is, of course, open to be rebutted.

Party Walls.—The term party wall is used in four different senses: (1) A wall of which two adjoining owners are tenants in common: This is the primary meaning. (2) A wall divided longitudinally into two strips, one belonging to each of the neighbouring owners. (3) A wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements. (4) A wall divided longitudinally into two moieties, each moiety being subject to a cross-easement in favour of the owner of the other moiety (*u*).

So far as regards party walls in the Metropolis, the rights and liabilities of the owners at common law were superseded by the provisions of the Metropolitan Building Act, 1855 (*x*), now repealed and replaced by the London Building Act, 1894 (*y*).

A tenant in common of a party wall is entitled to a partition or sale under the Partition Act, 1868 (*z*).

(*t*) *Vowles* v. *Miller*, 3 Taunt. 137.
(*u*) *Watson* v. *Gray*, 14 Ch. D. 192, at p. 195; 49 L. J. Ch. 243; 42 L. T. 294; 28 W. R. 438; 44 J. P. 537.
(*x*) 18 & 19 Vict. c. 122; *Standard Bank of British South America* v. *Stokes*, 9 Ch. D. 68; 47 L. J. Ch. 554; 38 L. T. 672; 26 W. R. 492.
(*y*) 57 & 58 Vict. c. ccxiii.
(*z*) *Mayfair Property Co.* v. *Johnston*, [1894] 1 Ch. 508; 63 L. J. Ch. 399; 70 L. T. 485.

Highways and Rivers.—The general rule as to whether or not any portion of a highway or river passes on the conveyance of property adjoining it is that where such property, even though described by reference to a plan in which the highway or river is not included, is said to be bounded either by a public thoroughfare or by a river, then, on the true construction of the instrument, half of the road or bed of the river passes, unless there is enough in the circumstances or in the expressions of the instrument to show that that is not the intention of the parties; and this presumption is applicable equally to streets in a town as to highways in the country, and the conveyance passes the soil of the highway as far as it is vested in the conveying party (*a*).

The provisions in the Public Health Act, 1875 (*b*), and the Metropolis Management Act, 1855 (*c*), vesting certain streets in the local authority, only vest the soil so far as necessary for the purposes of the statutes (*d*).

See PARCELS.

Requisitions.

1. *Is the wall on the* [*south*] *side of the premises contracted to be sold included in the sale? If not, is it a party wall, or does it belong to the adjoining owner?*

2. *Which, if any, of the boundary walls and fences are party walls and fences, and which are included in the sale?*

BUILDING SOCIETIES.

Building societies incorporated under the Building Societies Act, 1874 (*e*), have power, so far as is necessary for the purpose of making advances to members upon real

(*a*) *Re White's Charities, Charity Commissioners* v. *London Corporation*, [1898] 1 Ch. 659; 67 L. J. Ch. 430; 78 L. T. 550; 46 W. R. 479.
(*b*) 38 & 39 Vict. c. 55, s. 149.
(*c*) 18 & 19 Vict. c. 120, s. 96.
(*d*) *Vestry of St. Mary, Battersea* v. *County of London and Brush Provincial Electric Lighting Co., Ltd.*, [1899] 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31.
(*e*) 37 & 38 Vict. c. 42.

security, to hold land with the right of foreclosure, provided that any land to which any such society may become absolutely entitled by foreclosure or other extinguishment of the right of redemption shall, as soon afterwards as may be conveniently practicable, be sold or converted into money (*f*), and such a society may purchase or take upon lease any building for conducting its business, and may purchase or hold on lease any land for such purpose, and may sell, exchange, or let such building or any part thereof (*g*).

The Building Society Regulations, 1895, made under the Act of 1874, provide for the grant to building societies of certificates of incorporation : Any certificate of incorporation or registration or other document relating to a society under the Act purporting to be signed by the registrar is *primâ facie* evidence in all Courts without proof of the signature, and a printed copy of the rules of a society certified by the secretary or other officer of the society to be a true copy of its registered rules is *primâ facie* evidence of the rules (*h*). A certificate of incorporation under the Act is not to be granted to any then existing society except upon application to the registrar made by authority of a general meeting of the society specially called for the purpose, and the registrar may require of the person making the application a statutory declaration that such authority has been duly given (*i*).

It may be mentioned here that building societies under the Act of 1836 (*k*), and not subsequently incorporated under the Act of 1874, were enabled to lay out surplus contributions on real security to be vested in the trustees for the time being of the society, which securities vested in the successors of such trustees (*l*) : A purchaser of property so vested should require the abstract to show the changes of

(*f*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 13.
(*g*) *Ibid.* s. 37.
(*h*) *Ibid.* s. 20.
(*i*) *Ibid.* s. 12.
(*k*) 6 & 7 Will. 4, c. 32.
(*l*) *Ibid.* ss. 1, 4, applying the provisions of 10 Geo. 4, c. 56, as amended by 4 & 5 Will. 4, c. 40, s. 3; *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84.

the trustees, and proof to be adduced by production of the minutes of the society.

All estates and interests in real and personal estate belonging to or held in trust for any society certified under the Act of 1836, on its incorporation under the Act of 1874, vest in the society without any conveyance or assignment, except stocks and securities in the public funds of Great Britain and Ireland, and estates in copyhold or customary hereditaments the title to which cannot be transferred without admittance (*m*). The Act of 1836 was, as from the 25th August, 1896, repealed as to all societies certified thereunder after the year 1856 (*n*).

A receipt for the moneys secured, indorsed on a mortgage or further charge to a building society under the Act of 1836 by the trustees for the time being, was sufficient to vacate the mortgage and vest the estate in the person entitled to the equity of redemption without any reconveyance, such receipt being in the form specified in a schedule to the rules of the society (*o*); and a society registered under the Act of 1874 may indorse or annex to a mortgage or further charge either a reconveyance of the mortgaged property to the then owner of the equity of redemption, or as he may direct, or a receipt under the seal of the society countersigned by the secretary or manager in the form specified in the Act, and such receipt vacates the mortgage or further charge, and without reconveyance vests the estate in the person entitled (*p*).

The indorsed receipt of a building society operates in favour of the person or persons who, at its date, might have the best right to a conveyance of the property mortgaged; and where money was borrowed by A. from a building society, and A. afterwards borrowed a larger sum from B., part of which was applied in paying off the society, the balance being paid direct to A., who executed a mortgage to B. to secure the loan, the society indorsing a receipt on their mortgage and delivering the indorsed receipt with the deeds

(*m*) 37 & 38 Vict. c. 42, s. 27; 40 & 41 Vict. c. 63, ss. 3, 4.
(*n*) 57 & 58 Vict. c. 47, s. 25 (2).
(*o*) 6 & 7 Will. 4, c. 32, s. 5. (*p*) 37 & 38 Vict. c. 42, s. 42.

to A., it was held that B. had the legal estate for all purposes, and, consequently, that his mortgage had priority over that of a prior equitable mortgage of which he had no notice, not only in respect of the moneys applied in paying off the society, but also in respect of the balance of the loan paid directly to A. (*q*).

The indorsed receipt of a building society under the Act of 1874 is exempt from stamp duty (*r*), while under the Act of 1836, prior to the 31st July, 1868, not only a receipt, but a mortgage by a member to a building society required no stamp : On and after that date such a mortgage is exempt only when not exceeding 500*l.* (*s*).

It seems to be doubtful whether a mortgage given to a building society by one of its members can be transferred, though it has been held in the Irish Courts that it may (*t*). Stirling, J., abstained from expressing any opinion on the point when it arose in *Re Rumney and Smith*, nor did the Court of Appeal in the same case decide it; but the observations of Lindley, L.J., seem to point to the conclusion that such a mortgage debt cannot be assigned to a stranger to the society without the consent of the mortgagor (*u*).

Building societies registered under the Act of 1874 may borrow for the purposes of the society a sum, in the case of a permanent society, not exceeding two-thirds of the amount secured to the society by mortgages from its members, and in the case of a terminating society, not exceeding such two-thirds or twelve months' subscriptions on the shares for the time in force (*x*). Previously to that Act a building society had no power to borrow unless expressly authorized, but a rule providing that the society

(*q*) *Hosking* v. *Smith*, 13 App. Cas. 582; 58 L. J. Ch. 367; 59 L. T. 565; 37 W. R. 257; overruling on the point *Pease* v. *Jackson*, L. R. 3 Ch. 576; 37 L. J. Ch. 725; 17 W. R. 1; *Robinson* v. *Trevor*, 12 Q. B. D. 423; 43 L. J. Q. B. 85; 50 L. T. 190; 32 W. R. 374.

(*r*) 37 & 38 Vict. c. 42, s. 41.

(*s*) 31 & 32 Vict. c. 124, s. 11; Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 107; Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 89.

(*t*) *Ulster Permanent Building Society* v. *Glenton*, 21 L. R. Ir. 124.

(*u*) *Re Rumney and Smith*, [1897] 2 Ch. 351, at p. 359; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678.

(*x*) 37 & 38 Vict. c. 42, s. 15.

was established for raising a fund by (*inter alia*) deposits on loans was sufficient to authorize the society to borrow (*y*). Power to borrow "for the purposes of the society" is strictly limited to such purposes, and money lent to the directors and employed in a loan to another society was held not to be recoverable in a winding-up of the borrowing society (*z*).

A society incorporated under the Act of 1874 may terminate or be dissolved—

(1) Upon the happening of any event declared by its rules to be the termination of the society.

(2) By dissolution in manner prescribed by its rules.

(3) By dissolution with the consent of three-fourths of the members holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution. The instrument of dissolution must set forth—

(a) the liabilities and assets of the society in detail;

(b) the number of members and the amount standing to their credit in the books of the society;

(c) the claims of depositors and other creditors, and the provision to be made for their payment;

(d) the intended appropriation or division of the funds and property of the society;

(e) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent testified in the same manner. The instrument of dissolution and all alterations therein must be registered in the manner provided for the registration of rules, and are binding upon all members of the society.

(*y*) *Re Mutual Aid Permanent Benefit Building Society, Ex parte Anson*, 30 Ch. D. 434; 55 L. J. Ch. 111; 53 L. T. 802; 34 W. R. 143.

(*z*) *Davis's Case, Re Durham County Land and Building Society*, L. R. 12 Eq. 516; 41 L. J. Ch. 124; 25 L. T. 83.

(4) By winding up either voluntarily under the supervision of the County Court of the district in which the chief office or place of meeting for business of the society is situate or by such Court, if the Court shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting of the society specially called for the purpose, to present the same on behalf of the society, or on the petition of any judgment creditor for not less than 50*l.* (*a*).

In ascertaining the statutory majority of members, those members who have given notice of withdrawal, but have not received their money, are to be taken into account (*b*).

Societies not registered under the Act of 1874 may be wound up by the High Court under the Companies Acts (*c*), and by the County Court under the jurisdiction given by the Companies (Winding-up) Act, 1890 (*d*), and the society's property may in such cases be vested in the liquidators by order of the Court (*e*).

Requisitions.

1. *The certificate of the Registrar of Building Societies of the incorporation of the X. Y. Society under the Building Societies Act*, 1874, *must be produced.*

2. *By whom was the building society mortgage of the* , 19 , *paid off, and were there at the time any equitable incumbrances on the property?*

3. *What evidence do the vendor's solicitors offer that the County Court had jurisdiction to make the winding-up order of the* , 19 *?* (*f*).

4. *The X. Y. Building Society appears to be constituted under the old Act, and not to have been*

(*a*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 32.
(*b*) *Sibun* v. *Pearce*, 44 Ch. D. 354; 63 L. T. 123; 38 W. R. 658.
(*c*) 25 & 26 Vict. c. 89, s. 82; 8 Edw. 7, c. 69, s. 268.
(*d*) 53 & 54 Vict. c. 63; 8 Edw. 7, c. 69, s. 131.
(*e*) 25 & 26 Vict. c. 89, s. 203; 8 Edw. 7, c. 69, s. 272.
(*f*) See *Re Bowling and Welby's Contract*, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 43 W. R. 417; 12 R. 218.

incorporated under the Act of 1874. *A certificate from the secretary or a copy of the rules showing the authority of the trustees to indorse the receipt on the mortgage must be produced.*

5. *The instrument of dissolution of the X. Y. Building Society must be fully abstracted in chief in order that the purchaser may be satisfied that the statutory requirements have been complied with.*

BURIAL GROUNDS.

No building can be erected upon any disused burial ground except for the purpose of enlarging a church, chapel, meeting house or other place of worship (*g*); this applies to any ground, whether consecrated or not, which has been at any time set apart for the purposes of interments, whether interments have taken place in it or not, and even if it has been partly or wholly closed (*h*).

The prohibition does not apply to any burial ground which has been sold or disposed of under the authority of an Act of Parliament (*i*), nor to any building erected under a faculty obtained before the 14th August, 1884, nor to the site of a church where extra-mural burial has taken place, when sold under a scheme made in pursuance of the Union of Benefices Act, 1860 (*k*).

A contract for sale of land subject to disability through being a disused burial ground will not be enforced against a person who buys for building purposes (*l*).

(*g*) 47 & 48 Vict. c. 72, s. 3.

(*h*) 50 & 51 Vict. c. 32, s. 4; *Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. 502; 42 W. R. 358; 7 R. 622.

(*i*) 47 & 48 Vict. c. 72, s. 5; *Att.-Gen.* v. *Trustees of the London Parochial Charities*, [1896] 1 Ch. 541; 65 L. J. Ch. 242; 74 L. T. 184; 44 W. R. 395.

(*k*) *Re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, [1895] 1 Ch. 702; 64 L. J. Ch. 646; 72 L. T. 481; 43 W. R. 457; 13 R. 409.

(*l*) *Re Trustees of St. Saviour's Rectory and Oyler*, 31 Ch. D. 412; 55 L. J. Ch. 269; 54 L. T. 9; 34 W. R. 224; 50 J. P. 325.

Requisition.

The land contracted to be sold appears to have formed part of a disused burial ground within the meaning of the Disused Burial Grounds Act, 1884, *and the Open Spaces Act*, 1887, *s.* 4, *and cannot therefore be built upon. The vendors must show that the purchasers will be at liberty to erect buildings for secular purposes on the land.*

CHARGES.

See AGRICULTURAL HOLDINGS—LAND IMPROVEMENT ACTS.

CHARGES BY WILL.

Questions on this subject still arise, though less frequently every year by reason of the provision of the Land Transfer Act, 1897 (*m*). The following observations apply to such cases.

A charge by will of debts and legacies may not only be created expressly but by implication : Thus, as regards debts, a general direction by a testator that his debts shall be paid, charges them on the real estate (*n*) but not where after such general direction the testator has specified a particular fund for the purpose (*o*) nor where the direction is that the debts are to be paid by the executors, they not being devisees of the estate (*p*) : If they are such devisees there is a charge on the real estate devised to them (*q*).

Next, as regards legacies when they are given and followed by a gift of the residue of the testator's real and

(*m*) 60 & 61 Vict. c. 65, Part I.
(*n*) *Graves* v. *Graves*, 8 Sim. 43.
(*o*) *Thomas* v. *Britnell*, 2 Ves. sen. 313.
(*p*) *Cook* v. *Dawson*, 30 L. J. Ch. 359; 4 L. T. 326; 9 W. R. 434; 3 De G. F. & J. 127.
(*q*) *Henvell* v. *Whitaker*, 3 Russ. 343.

personal estate in a mass, the testator's real estate is thereby charged with their payment (*r*), and the same principle applies where the legacies are followed by a gift of real and personal estate "not otherwise disposed of" (*s*).

On the other hand, a charge of legacies in such terms as "on all the real estate" of the testator, does not, *primâ facie*, charge lands specifically devised (*t*), but a charge of debts and legacies in similar terms does so as regards both debts and legacies (*u*).

A charge of legacies on real estate charges thereon any annuities given by the will (*x*).

The statutes making real property assets for payment of debts do not create a charge; a purchaser from an heir-at-law or devisee need not therefore concern himself as to the existence of debts, unless they are expressly or impliedly charged upon the land; and the rule is the same as to legacies and annuities, as these are not payable out of real estate unless it is charged with payment of them. Where a testator charges his real estate and devises it upon trusts which provide for the payment of debts and legacies, no difficulty arises, as trustees have, by Lord St. Leonards' Act, power to give receipts for any purchase or mortgage money (*y*), and Lord Cranworth's Act (*z*) subsequently gave trustees power to give receipts for any trust money payable under instruments coming into operation on or after the 28th August, 1860, and the Conveyancing Act, 1881, applying to all trusts whenever created, gives trustees still wider powers of giving discharges (*a*).

But the payment of debts and legacies is frequently charged by testators upon their real estate while they devise

(*r*) *Greville* v. *Brown*, 7 H. L. C. 689; 34 L. T. (O. S.) 8; 7 W. R. 673; 5 Jur. (N. S.) 849.

(*s*) *Re Bawden, Bawden* v. *Cresswell*, [1894] 1 Ch. 693; 63 L. J. Ch. 412; 70 L. T. 526; 42 W. R. 235; 8 R. 76.

(*t*) *Conron* v. *Conron*, 7 H. L. C. 168.

(*u*) *Re Emmerton, Maskell* v. *Farrington*, 8 Jur. (N. S.) 1198; 7 L. T. 301; 11 W. R. 127; 1 N. R. 37.

(*x*) *Heath* v. *Weston*, 3 De G. M. & G. 601.

(*y*) 22 & 23 Vict. c. 35, s. 23.

(*z*) 23 & 24 Vict. c. 145, s. 29.

(*a*) 44 & 45 Vict. c. 41, s. 36, continued by the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 20.

such real estate upon uses or trusts which do not expressly provide for the raising of the sums so charged. The difficulties of dealing with land so charged have to a large extent been overcome by the provisions of Lord St. Leonards' Act. It will be convenient in the first place to consider that statute and afterwards the cases which will occasionally arise that are not covered by it : It provides that where, by a will coming into operation on or after the 13th August, 1859, a testator charges real estate with the payment of debts or any specific legacy or sum, and devises the estate so charged to trustees for the whole of his estate or interest, and makes no express provision for raising the debts, legacy, or sum, the devisees in trust may sell or mortgage (*b*), as also may any person taking the estate so charged by survivorship, descent, or devise (*c*) or failing any such devise by the testator, of the whole of his estate or interest so charged, his executors may sell or mortgage (*d*), and purchasers and mortgagees are not bound to inquire whether the powers are being duly and correctly exercised (*e*). A purchaser or mortgagee is not bound to see to the application of purchase or mortgage money, and even before the Conveyancing Act, 1881 (*f*), the trustees or executors could give the purchaser or mortgagee a good receipt unless the contrary was expressly provided (*g*).

The Act does not extend to a beneficial "devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies" (*h*) : The meaning of this is that where a testator has devised his whole estate and interest directly to or in trust for A., or A. and B., or any number of persons as tenants in common, or as joint tenants in fee or in tail, so that the devisee or devisees could themselves mortgage the property, then neither the executors nor the trustees are to have the power; but where the estate is devised by way of settlement, so that there is

(*b*) Lord St. Leonards Act (22 & 23 Vict. c. 35), s. 14.
(*c*) *Ibid.* s. 15.
(*d*) *Ibid.* s. 16.
(*e*) *Ibid.* s. 17.
(*f*) 44 & 45 Vict. c. 41, s. 36, continued by 56 & 57 Vict. c. 53, s. 20.
(*g*) 22 & 23 Vict. c. 35, s. 16.
(*h*) *Ibid.* s. 18.

not any individual or any number of individuals able to make a title, then that is a case to which the statute is intended to apply (*i*).

The cases where a testator has charged his land with the payment of debts, legacies, or annuities, and has not made any express provision for raising them, which are not provided for by Lord St. Leonards' Act, are :—

(1) Where the testator died before 13th August, 1859.

(2) Where the land charged is devised to one or more persons beneficially in fee or in tail or for the testator's whole estate and interest (*h*).

(3) Where the testator has not devised the land charged to any trustee or trustees for his whole estate and interest therein, and there is no executor (*k*).

With regard to a charge of debts :—

(1) It may now be safely assumed that all the debts of a testator who died before the 13th August, 1859, have been duly paid, or have become statute-barred.

(2) Where there is a charge of debts generally, the purchaser from a beneficial devisee in fee or in tail is not bound to see to their payment, for "a charge is a devise of the estate in substance and effect *pro tanto* upon trust to pay the debts" (*l*). The case is, however, different where specified debts are charged upon the property, and it is then incumbent on the purchaser from such a devisee to satisfy himself that such debts have been paid, or to see that they are paid out of the purchase money (*m*).

(3) Where a testator did not devise his estate to any trustee or trustees for his whole estate and interest, or to any person in fee or in tail, or for the testator's whole estate and interest, and there was no executor, unless the testator died sufficiently long ago to raise a presumption that his debts had been satisfied, it was formerly impossible to make a title without the aid of the Court.

(*i*) *Re Wilson, Pennington* v. *Payne*, 54 L. T. 600; 34 W. R. 512, *per* Kay, J.

(*k*) *Re Clay and Tetley*, 16 Ch. D. 3; 50 L. J. Ch. 164; 43 L. T. 402; 29 W. R. 5.

(*l*) *Bailey* v. *Ekins*, 7 Ves. jun. 319.

(*m*) *Lloyd* v. *Balwin*, 1 Ves. sen. 173.

With regard to legacies or annuities charged upon land, a purchaser must, in all cases not provided for by Lord St. Leonards' Act, insist upon the concurrence of the legatees (*n*), and the same obligation applies to specific or scheduled debts (*m*). Where debts as well as legacies are charged on the real estate, it is said that no further concurrence is necessary than where the lands are charged with debts alone, but where debts and annuities are charged upon property, it has always been the custom of conveyancers to treat annuitants as incumbrancers notwithstanding the charge of debts; and until it has been expressly decided that in such a case a purchaser is exonerated from inquiring into the payment of legacies and annuities, he would be well advised to require proof of payment of legacies as well as of annuities.

Debts and legacies charged on land are barred after twelve years (*o*) from the right accruing, or payment on account, or acknowledgment in writing.

When annuities are charged upon land and the purchaser is buying the land subject thereto, a receipt for all the payments of the annuities, which have been made during the previous six years, should strictly be required, but it is not the practice, unless any doubt exists, to call for more than the last receipt, and in any case proof of the payments which have been made prior to the previous six years may be dispensed with (*p*). Where an annuitant has died, the purchaser should require the same proof of the payment of the annuity up to the death of the annuitant, and a receipt for the payment of succession and estate duties.

Whenever the receipt for the payment of a legacy or a receipt for the payment of any of the first four yearly payments of an annuity, is required, the purchaser should consider whether legacy duty is payable in respect of such legacy or annuity, and, if so, should insist upon a receipt properly stamped as required by the Legacy Duty Act, 1796 (*q*).

(*n*) *Re Rebbeck, Bennet* v. *Rebbeck*, 63 L. J. Ch. 596; 71 L. T. 74; 42 W. R. 473; 8 R. 376.
(*o*) 37 & 38 Vict. c. 57, ss. 8, 10.
(*p*) *Ibid.* s. 42.
(*q*) 36 Geo. 3, c. 52.

When an annuitant concurs in a sale, the purchaser should insist upon such succession duty as will become payable on the decease of the annuitant being commuted or otherwise provided for.

Where there is a tenant for life, the provisions of the Settled Land Act, 1882, must be borne in mind (*r*), whereby the consent of the tenant for life is necessary to the exercise of any power exercisable for any purpose provided for by the Act : It is prudent to require such consent, although, at all events in the case of a mortgage, it is probably not strictly necessary, and in the case of a sale, except one under an overriding power, it is a moot point whether or not it is necessary, the general opinion, however, being that it is.

Where a legal personal representative sells or mortgages leaseholds, the purchaser is in no case bound to see to the payment of debts, legacies, or annuities. With regard to the wills of testators dying after 1897, until there has been an assent by the personal representative, real estate vesting in the latter stands on the same footing as leaseholds.

A purchaser from a legatee of leaseholds, or from a devisee of real property (other than copyholds, where the testator was tenant on the rolls of the manor), taken under a will of a testator dying after the 31st December, 1897, should require the assent of the legal personal representative, which may, in the latter case, be given with or without a charge in respect of money which the personal representative is liable to pay (*s*), and where there is an intestacy an assignment or conveyance from such legal personal representative is now necessary in the case of real property as it has always been in the case of leaseholds.

See EXECUTORS, SALES AND MORTGAGES BY—REAL REPRESENTATIVE—TRUSTEES, SALES AND MORTGAGES BY—WILLS.

Requisitions.

1. *Which, if any, of the annuitants mentioned in A. B.'s will are dead, and when did they die? The*

(*r*) 45 & 46 Vict. c. 38, s. 56 (2). (*s*) 60 & 61 Vict. c. 65, s. 3 (1).

deaths of such as are dead should be proved by the production of certificates.

2. *There being a charge of legacies on the estate of C. D., deceased, payment thereof must be proved: What evidence is offered on the point?*

3. *The testator has specifically charged the property purchased with the payment of* 1,000*l. which he had covenanted to leave by will to his wife; and with the payment of a legacy of* 500*l. to his nephew. Proper receipts for both these payments must be produced.*

4. *Proof must be given of the payment of the rentcharge to A. B. up to the time of his death, and receipts for the succession duty and estate duty payable on the determination of such rentcharge must be produced.*

5. *So far as appears from the abstract, the annuitant A. B. is still alive; it is presumed that she will join in the conveyance to release her annuity. Proper provision must be made for the payment of succession duty on her decease.*

6. *The assent in writing of the legal personal representative of A. B., deceased, to the devise to the vendor of the property contracted to be sold must be produced.*

CHARITABLE USES.

See MORTMAIN AND CHARITABLE USES.

CHATTELS REAL.

See LEASEHOLD PROPERTY.

CHOSE IN ACTION.

Prior to the 1st of November, 1875, a chose in action was not in general capable of being assigned except in equity. Consequently, as no question of getting in the legal interest could arise, the assign took subject to all equities that might be enforced against the assignor.

No such assignment was effectual as regards the debtor until notice had been given to him. And as between different assigns or mortgagees of the same debt, the one that first gave notice to the debtor obtained priority (*t*).

There are a few exceptions to the rule that a chose in action was not assignable at law; for instance :—

(1) Bank notes, Treasury bills, cheques, bills of exchange, promissory notes, bonds and debentures to bearer, and other instruments payable to bearer treated by the mercantile world as negotiable (*u*). These can be assigned at law without notice to the person liable.

(2) Government stock and inscribed stocks, registered stocks, shares and debentures (*x*).

(3) Covenants with an owner of land or with a lessee which concern the premises conveyed, demised or assigned, such as covenants for title or for production of title deeds, pass to the assign of the land, and covenants incident to the reversion of hereditaments leased for lives or years pass to the grantee of the reversion (*y*), and no notice is necessary.

The assign of a policy of life insurance was, after written notice had been given to the insurance company, empowered to sue in his own name (*z*), and the assign of a policy of

(*t*) *Dearle* v. *Hall*, 2 L. J. Ch. 62; 3 Russ. 1.

(*u*) *Bechuanaland Exploration Co.* v. *London Trading Bank, Ltd.*, [1898] 2 Q. B. 658; 67 L. J. Q. B. 986; 79 L. T. 270.

(*x*) Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 14; The Companies Act, 1862 (25 & 26 Vict. c. 89), s. 22; Companies (Consolidation) Act, 1908 s. 22.

(*y*) 32 Hen. 8, c. 34, s. 1.

(*z*) Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144).

marine insurance was apparently, with or without notice, also empowered to sue in his own name (*a*).

Provision was made by the Judicature Act for the effectual assignment at law of legal choses in action, it being enacted that any absolute assignment (not purporting to be by way of charge only) by writing under the hand of the assignor of which express notice in writing has been given to the debtor, transfers the legal right to such a chose in action as from the date of the notice (*c*). The assignee takes subject to all equities, in the same way as before this enactment (*d*). A mortgage made in the ordinary form, with a proviso for redemption and re-assignment, is an absolute assignment within the meaning of this provision (*e*), and it is now unnecessary to insert a power of attorney to sue in the name of an assignor in any such mortgage or assignment if notice in writing be given to the debtor.

The statute enables the transferee of a mortgage, when the mortgagor is not a party to the transfer, to sue on the covenant in his own name if notice in writing has been given to the mortgagor; and where the mortgagor is a party, it is apprehended that the transferee can so sue, even without notice being given under the statute, or a power of attorney being inserted in the deed.

An assignment of a policy of life assurance does not confer any right on the assign to sue for the amount assured unless it is duly stamped (*f*). On an assignment of such a policy, it is usual to take from the assurance company an acknowledgment of the receipt of notice of the assignment, which the company are bound to give on receiving notice, and a request in writing, and on payment of a fee not exceeding 5*s*.; when given by a person being either *de jure* or *de facto* the manager, secretary, treasurer, or other principal officer

(*a*) Policies of Marine Assurance Act, 1868 (31 & 32 Vict. c. 86).
(*c*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6).
(*d*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6).
(*e*) *Durham* v. *Robertson*, [1898] 1 Q. B. 765; 67 L. J. Q. B. 484; 78 L. T. 438.
(*f*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 118 (1).

of the company, the acknowledgment is conclusive evidence of the receipt by the company of the notice (*g*).

Since the 1st January, 1882, a chose in action has been capable of being transferred by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and has, in like manner, been capable of transfer by a husband to his wife, and by a wife to her husband, alone or jointly with another person (*h*).

COMMENCEMENT OF TITLE.

See LENGTH OF TITLE—ROOT OF TITLE.

COMMITTEE.

See INSANITY.

COMPANIES REGISTERED UNDER THE COMPANIES ACTS.

On the registration of a company under the Companies Acts, 1862 to 1908, or under the Companies (Consolidation) Act, 1908 (*i*), the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, become a body corporate with power to hold land (*k*), such power being only restricted by the provision that no company formed for the purpose of promoting art, science, charity, or any other like object not involving the acquisition of gain by the company or by its individual members, can, without

(*g*) The Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144).
(*h*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 50.
(*i*) 8 Edw. 7, c. 69.
(*k*) *Ibid.* s. 16.

the sanction of the Board of Trade, hold more than two acres (*l*). A certificate of incorporation of any company, given by the registrar, is conclusive evidence that all the requirements of the Act in respect of registration have been complied with (*m*).

Subject as stated above, an incorporated company can hold property, and if it is expressly or impliedly warranted in doing so by its constitution, dispose of it as freely as an individual (*n*).

A fee simple estate may be conveyed to a company without any words of limitation. A purchaser should, however, satisfy himself that the company's common seal is affixed in manner required by the articles of association.

The property of a company incorporated under the Companies Acts is not divested by a winding-up order, but may still be conveyed in the name of the company. In the case of companies ordered to be wound up on or after the 1st January, 1891, property may be sold and the seal of the company be affixed by the liquidator without the sanction of the Court or committee of inspection (*o*); but with regard to companies ordered to be wound up before that date, the sanction of the Court was required to enable the liquidator to sell property and affix the company's seal (*p*).

The corporate state of a company being wound up voluntarily continues until its affairs are wound up (*q*), and the liquidator can sell the company's property and affix its seal without any sanction or consent (*r*). And where a company is being wound up under the supervision of the Court, the liquidator may (unless otherwise directed by the Court) exercise all the same powers without the intervention of the Court as if the company were being wound up voluntarily (*s*).

(*l*) 8 Edw. 7, c. 69, s. 19.
(*m*) *Ibid.* s. 16.
(*n*) *Re Patent File Co., Ex parte Birmingham Banking Co.*, L. R. 6 Ch. 83, at p. 87; 40 L. J. Ch. 190; 23 L. T. 484; 19 W. R. 193.
(*o*) 53 & 54 Vict. c. 63, s. 12 (2); Companies (Consolidation) Act, 1908, s. 151.
(*p*) 25 & 26 Vict. c. 89, s. 95.
(*q*) Companies (Consolidation) Act, 1908, s. 184.
(*r*) *Ibid.* s. 186.
(*s*) *Ibid.* s. 203.

In the case of the winding-up of unregistered companies, the property held on behalf of the company may be vested in the liquidator by an order (*t*) but where there are several liquidators appointed, in order to pass the whole legal estate vested in them, all the liquidators must join in the conveyance (*u*).

Property in form duly conveyed to a corporation becomes vested in such corporation, even though the acquisition of it was *ultra vires* (*x*) : Consequently, a purchaser is not concerned to inquire whether a company, through whom a vendor claims, was acting within its powers in purchasing; but this does not apply to an absolute statutory prohibition; a purchaser should therefore satisfy himself not only that the company was duly incorporated, but also that it was not formed for the purpose of promoting art, science, charity, or the like objects not involving the acquisition of gain (*y*), and this can be ascertained by the production of the registrar's certificate of incorporation and an inspection at the registry of the memorandum of association : Should it be found that the company was one of the description referred to, a purchaser should require either evidence that it does not hold more than two acres in all, or the production of the licence of the Board of Trade for so doing.

The following mortgages or charges by companies under the Acts are required to be registered at Somerset House, within twenty-one days after their creation :—

(1) A mortgage or charge for the purpose of securing an issue of debentures.
(2) A mortgage or charge on uncalled capital.
(3) A mortgage or charge which if executed by an individual would be a bill of sale.
(4) A mortgage or charge on any land or any interest therein.

(*t*) Companies (Consolidation) Act, 1908, s. 272.
(*u*) *Re Ebsworth and Tidy's Contract*, 42 Ch. D. 23; 58 L. J. Ch. 665; 60 L. T. 841; 37 W. R. 657; 54 J. P. 199.
(*x*) *Ayers* v. *South Australian Banking Co.*, L. R. 3 P. C. 548; 40 L. J. P. C. 22; 19 W. R. 860; 7 Moore, P. C. C. (N. S.) 432.
(*y*) Companies (Consolidation) Act, 1908, s. 19.

(5) A mortgage or charge of any book debts of the company.

(6) A floating charge on the undertaking or property of the company.

If they are not registered they are, so far as any security on the company's property or undertaking is thereby conferred, void against the liquidator and any creditor of the company (*z*).

As to this subject, *see also* DEBENTURES.

Requisitions.

1. *A certificate by the Registrar of Joint Stock Companies of incorporation of the A. B. company must be produced, also a copy of the company's memorandum of association.*

2. *Will the vendor's solicitor supply particulars of any debentures issued by the vendor company and an authority for the purchaser's solicitor to inspect the vendor's register of mortgages?*

3. *The purchaser having notice of the debentures issued by the X. company, such debentures should be abstracted and produced in order to show that the company* [*and the trustee*, if any] *have power to sell.*

4. *From its memorandum of association the C. D. company appears to have been formed for objects other than the acquisition of gain: It must therefore be proved that at the time of the purchase in question the company did not in all, including the piece of land purchased, hold more than two acres, or a licence from the Board of Trade enabling it to hold more must be produced.*

5. *It does not appear that the X. Y. Company was registered under the Companies Acts. Either this must be shown or all persons interested must join in the conveyance, or an order of the Court must be obtained.*

(*z*) Companies (Consolidation) Act, 1908, s. 93.

COMPLETION.

Questions frequently arise as to the rights of vendor and purchaser when completion does not take place on the day appointed by the contract. From the time when a good title is shown, in the absence of condition on the subject, the purchaser is entitled to the rents and profits, and bound to discharge outgoings, and the vendor is entitled to the purchase money with interest until actual payment. There may, however, be conduct on the part of the vendor or the purchaser which will release the purchaser wholly or partially from liability for paying interest; thus, where the vendor is guilty of delay, and the purchaser deposits the purchase money at a bank and gives the vendor notice that he shall object to pay more than bank interest.

When, as is usually the case, the contract provides that if from any cause other than the wilful default of the vendor the completion shall be delayed beyond the appointed day, the purchaser shall pay interest, then the purchaser, even if not to blame for the delay, must pay such interest if the delay arises through the inability of the vendor to make a title in due time, or any honest mistake on his part (*a*).

The refusal by a purchaser to complete on the ground that the title is bad is a default by him within the meaning of the conditions of sale if the title turns out to be good; so that even if the conditions provide that if delay in completion should arise from any cause other than the neglect or default of the purchaser, he may place the purchase money on deposit at a bank and give notice to the vendor, who shall thereafter be only entitled to such interest, the purchaser will still be liable for payment of interest (*b*).

See CONDITIONS OF SALE.

(*a*) See *Bennett* v. *Stone*, [1903] 1 Ch. 509, and cases therein cited; 72 L. J. Ch. 240; 88 L. T. 35; 51 W. R. 338.

(*b*) *Re Bayley, Worthington & Cohen's Contract*, [1909] 1 Ch. 648; 78 L. J. Ch. 351; 100 L. T. 650.

COMPROMISE.

An agreement entered into upon a supposition of a right or of a doubtful right, though it afterwards turns out that the right was on the other side, is binding, the compromise of a doubtful right being a sufficient foundation for the agreement (*c*). The Court proceeds on this principle where doubts and disputes arise with regard to the rights of different members of the same family—for example, as to whether a person is legitimate. These family arrangements are much favoured by the Court, and will be sustained even when resting upon grounds which would not have been considered satisfactory as between strangers (*d*).

CONDITIONS OF SALE.

A condition of sale providing that the purchaser's objections and requisitions as to the title are to be sent to the vendor within a specified time after delivery of the abstract means the objections and requisitions addressed to the abstract as then delivered, and does not apply to objections or requisitions relating to deeds or matters which should have been, but were not, disclosed in the abstract (*e*) nor does such a condition apply to objections going to the root of the title (*f*); if subsequent facts show a bad title or no title, the purchaser may raise the objection at any time (*g*). For the purposes also of a condition for rescission, time runs from the delivery of a perfect abstract, that is to say, one which contains with sufficient clearness and fulness the effect of every

(*c*) *Stapilton* v. *Stapilton*, 1 Atk. 2.
(*d*) *Westby* v. *Westby*, 2 D. & War. 502; 1 Con. & L. 537; 4 Ir. Eq. R 585.
(*e*) *Re Cox and Neve's Contract*, [1891] 2 Ch. 109, at p. 118; 64 L. T. 733; 39 W. R. 412.
(*f*) *Want* v. *Stallibrass*, L. R. 8 Ex. 175; 42 L. J. Ex. 108; 29 L. T. 293; 21 W. R. 685.
(*g*) *Warde* v. *Dixon*, 28 L. J. Ch. 315; 32 L. T. 349; 7 W. R. 148; 5 Jur. (N. S.) 698; *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465, at p. 471; 51 L. J. Ch. 434; 46 L. T. 542; 30 W. R. 801.

instrument which constitutes part of the vendor's title (*h*); and if the vendor does not deliver a sufficient abstract by the day (if any) appointed in the conditions he cannot hold the purchaser bound to send in his objections within the time limited for that purpose, even though it was stipulated in the condition for sending in the objections that time in that respect should be of the essence of the contract. In such a case the time after which the objections will be considered as waived will depend upon the general principles of the Court and the conduct of the parties (*i*).

Wilful non-delivery of the abstract by the day named in the conditions, or within a reasonable time if no day is named, entitles the purchaser to refuse to carry out the contract (*k*); but the acceptance of the abstract after the day named in the condition for its delivery is a waiver of the condition (*l*); where, therefore, a purchaser intends to rely upon non-delivery at the time named, or, where no time named, within a reasonable time before the day fixed for completion, as a ground for refusing to carry out the contract, he should decline to accept the abstract and return it without reading it (*m*).

If a contract for the sale of land is silent as to the title which is to be shown by the vendor, the legal implication that the purchaser is entitled to a good title may be rebutted by evidence that before the execution of the contract the purchaser had notice of defects in the vendor's title; but if the contract expressly provides that a good title shall be shown, the purchaser is entitled to insist upon a good title, notwithstanding that, before the execution of the contract, he had notice of such defects (*n*).

A special condition precluding a purchaser from calling for a specified part of his vendor's title does not prevent him

(*h*) *Oakden* v. *Pike*, 11 Jur. (N. S.) 666; 34 L. J. Ch. 620; 12 L. T. 527; 13 W. R. 673.

(*i*) *Upperton* v. *Nickolson*, L. R. 6 Ch. 436; 40 L. J. Ch. 401; 25 L. T. 4; 19 W. R. 733.

(*k*) *Compton* v. *Bagley*, [1892] 1 Ch. 313; 61 L. J. Ch. 113; 65 L. T. 706.

(*l*) *Hipwell* v. *Knight*, 1 Y. & C. 401; 4 L. J. Ex. (Eq.) 52.

(*m*) *Seton* v. *Slade*, 7 Ves. jun. 265, at p. 276; 6 R. R. 124.

(*n*) *Re Gloag and Miller's Contract*, 23 Ch. D. 320; 52 L. J. Ch. 654; 48 L. T. 629; 31 W. R. 601.

from taking objections as to matters which he discovers outside the abstract (*o*); and such a condition does not preclude requisitions being made on points in respect of which the title appearing is evidently defective, though it disentitles the purchaser from inquiring into matters of verification and evidence.

Where a condition provides that the purchaser shall not make any objection to a certain part of the title, and the purchaser afterwards discovers that there is a vital defect in such part, and consequently that the vendor has no title to the property, the Court will refuse to decree specific performance of the contract, and will leave the parties to their remedies at law, but will not order repayment to the purchaser of his deposit (*p*).

A condition stating clearly the nature of a defect may throw the burden of it on the purchaser; but a condition referring to the nature of the question on the title, and stating that the vendors believe that they can make a good title notwithstanding it, will not have that effect (*q*).

A condition of sale is bad as misleading if it requires the purchaser to assume what the vendor knows to be false, or if it alleges that the state of title is not accurately known, when in fact it is known to the vendor (*r*); but a condition of sale requiring the purchaser to assume certain facts is not misleading if the vendor believes the facts to be true, even though it is intended to cover a flaw which goes to the root of the title; in such a case it is not necessary to explain in the condition the specific defect in the title which the condition is intended to cover (*s*).

A condition providing for compensation in case of misdescription is not binding when there is any wilful mis-

(*o*) *Darlington* v. *Hamilton*, Kay, 550; 23 L. J. Ch. 1000; 2 Eq. Rep. 906.

(*p*) *Re Scott and Alvarez's Contract*, [1895] 2 Ch. 603; 64 L. J. Ch. 821; 73 L. T. 43; 43 W. R. 694; 12 R. 474.

(*q*) *Re Trustees of St. Saviour's Rectory and Oyler*, 31 Ch. D. 412; 55 L. J. Ch. 269; 54 L. T. 9; 34 W. R. 224; 50 J. P. 325.

(*r*) *Re Banister, Broad* v. *Munton*, 12 Ch. D. 131; 48 L. J. Ch. 837; 40 L. T. 828; 27 W. R. 826.

(*s*) *Re Sandbach and Edmondson's Contract*, [1891] 1 Ch. 99; 60 L. J. Ch. 60; 63 L. T. 797; 39 W. R. 193.

description by the vendor, and the Court will in such case relieve the purchaser from his contract, and where the misdescription, although not fraudulently made, is inaccurate in such a material and substantial degree, and so affecting the subject-matter of the contract that the purchaser would not get substantially what he bargained for, he is justified in refusing to carry out his contract (*t*).

A condition that a misdescription shall not annul the sale nor entitle either party to compensation, applies only to trivial errors (*u*); and when there is a slight and unintentional misdescription of the property sold, even in the absence of an express condition to that effect, specific performance with compensation will be decreed (*u*).

A contract provided that, if from any cause whatever other than the default of the vendor the purchase should not be completed by the day fixed, the purchaser should pay interest until completion. Upon the investigation of the title a defect in it was discovered by the vigilance of the purchaser's advisers, which was not known to or suspected by the vendor when he entered into the contract, and the time occupied in remedying the defect delayed the completion of the purchase for nearly three months, but the purchaser did not have his money ready at the time fixed for completion. It was held that, there being no want of reasonable care on the part of the vendor and no abstinence from doing anything that he ought to have done, the delay was not attributable to his default, and that the purchaser must pay interest until completion (*x*).

See COMPLETION—PARTICULARS OF SALE—RESCISSION.

Requisition.

It appears that [*state nature of objection*]. *This objection goes to the root of the title, and notwithstanding Condition No.* , *the purchaser is entitled to and does decline the title offered.*

(*t*) *Re Arnold, Arnold* v. *Arnold*, 14 Ch. D. 270; 42 L. T. 705; 28 W. R. 635.

(*u*) *Ibid.*, 14 Ch. D., at p. 279; 42 L. T. 705; 28 W. R. 635.

(*x*) *Re Woods and Lewis' Contract*, [1898] 2 Ch. 211; 67 L. J. Ch. 475; 78 L. T. 665; 46 W. R. 643.

CONDITIONS RESTRAINING MARRIAGE.

See MARRIAGE, RESTRAINT ON.

CONSIDERATION.

A deed does not require any consideration to support it as between the parties, but the consideration should appear (1) in order to prevent a resulting use in cases where no use is declared; (2) in order to obviate the necessity of proof in cases where, though binding between the parties, a voluntary conveyance would be ineffectual against persons not parties (*y*); (3) because the receipt for the consideration in the body of a deed executed after the 31st December, 1881, is a sufficient discharge to a purchaser without a further receipt being indorsed (*z*); and a receipt either in the body of, or indorsed on, a deed executed after that date is sufficient evidence of the payment in favour of a subsequent purchaser who has no notice that the money has not been paid (*a*), and is also an authority for the payment of purchase money and other consideration to the solicitor producing the deed (*b*); (4) because the effect of the Stamp Act, 1891 (*c*), is to impose a penalty on the omission to state the consideration with intent to defraud.

As to deeds executed before 1882, a receipt for the consideration should be indorsed, and the want of such indorsement was formerly constructive notice that it has not been paid. But, even if the receipt is not indorsed on deeds executed prior to 1882, evidence of the payment of the consideration need not now be required, as a recital or statement in a deed twenty years old is sufficient evidence of its truth (*d*).

(*y*) *E.g.*, under 13 Eliz. c. 5, or the Bankruptcy Act, 1883 or 1914.
(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 54.
(*a*) *Ibid.* s. 55.
(*b*) *Ibid.* s. 56; The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 17.
(*c*) 54 & 55 Vict. c. 39, s. 5.
(*d*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2.

As to deeds executed after 1881, a receipt in the body of the deed is a sufficient discharge to a purchaser without a receipt being indorsed (*e*), and a receipt either in the body of the deed or indorsed therein is, in favour of a subsequent purchaser not having notice that the money was not in fact paid, sufficient evidence of the payment (*f*). Such a receipt is sufficient authority for payment to the solicitor producing it, and that, since the 24th December, 1888, even if he is acting for trustees (*g*).

The survivor or survivors of two or more mortgagees holding as joint tenants could not formerly give a discharge unless the mortgage contained a proper clause enabling them to give receipts, or a joint account clause; but now with regard to mortgages to persons jointly, made after the 31st December, 1881, neither of such clauses is necessary, as the receipt of the survivors or survivor of two or more joint mortgagees is made sufficient (*h*).

See BANKRUPTCY—SETTLEMENTS.

Requisitions.

1. *Has not the indenture of , 1880, any receipt indorsed?—No such receipt is abstracted.*

2. *The indenture of , 19 , appears to have been a voluntary one, and, although dated more than two years ago, it is less than ten years old: What evidence does the vendor offer that the settlor was at the time able to pay all his debts without the aid of the property conveyed?*

[The answer to this would probably be that the title of the purchaser would prevail against the trustees in bankruptcy (*i*).]

(*e*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 54.
(*f*) *Ibid.* s. 55.
(*g*) *Ibid.* s. 56; Trustee Act, 1893, s. 17.
(*h*) 44 & 45 Vict. c. 41, s. 61.
(*i*) *Re Carter and Kenderdine's Contract*, [1897] 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484.

CONSOLIDATION OF MORTGAGES.

Consolidation is the right which a mortgagee has to require a mortgagor who is seeking to redeem one of several mortgages to redeem all other mortgages held by the mortgagee on properties of the mortgagor. The right can only arise when the mortgages were originally made by the same mortgagor. It is not enough that the different equities have become vested in the same person by assignment. A mortgagee cannot for the purpose of consolidation go behind the title of the mortgagor, so that if the mortgagor is really a trustee for the mortgagor of other property mortgaged to the same mortgagee, this fact will not entitle the mortgagee to consolidate (*k*). A purchaser for value from a mortgagor of both the properties mortgaged is in no better position as regards consolidation than the mortgagor himself, even if he purchases before the mortgages came into the same hands (*l*). Where, however, the union of the mortgages does not take place until after the equity of redemption in one of the properties mortgaged has been assigned for value, the mortgagee cannot consolidate, even though the right to redeem both mortgages afterwards becomes vested in the same person (*m*).

A mortgagor under a mortgage made after 1881 is entitled to redeem any one of several mortgages without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on other property. This does not, however, apply where a contrary intention is expressed in one of the mortgage deeds (*n*). The purchaser of an equity of redemption should therefore always satisfy himself by inquiry of the mortgagee whether he claims any such right, and should, if possible, obtain his answer in writing.

(*k*) *Sharp* v. *Rickards*, [1909] 1 Ch. 101; 78 L. J. Ch. 29; 99 L. T. 916.

(*l*) *Pledge* v. *White*, [1896] A. C. 187; 65 L. J. Ch. 449; 74 L. T. 323; 44 W. R. 589.

(*m*) *Minter* v. *Carr*, [1894] 3 Ch. 498; 63 L. J. Ch. 705; 71 L. T. 526; 7 R. 558.

(*n*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 17.

Requisition.

What is the present address of the mortgagee of the property contracted to be sold? Has the vendor or have his predecessors in title effected to the same or any other mortgagee any mortgage on property other than that contracted to be sold, which is now liable to be consolidated with the abstracted mortgage?

CONSTRUCTIVE NOTICE.

See NOTICE.

CONTINGENT REMAINDERS.

Since the 1st January, 1838, contingent remainders have been capable of being disposed of by will, whether the testator is or is not ascertained as the person in whom they may become vested (*o*); and after the 31st December, 1844, such remainders have been capable of being disposed of by deed, whether the object of the limitation of the interest is or is not ascertained (*p*).

The common law requires that there shall be at all times a tenant seised of the legal estate in the land; consequently every vested remainder must be so limited as to take effect in possession immediately on the expiration of the particular estate; and prior to the 1st January, 1845, a contingent remainder was liable to fail unless it vested at or before the determination of such particular estate, whether such determination was caused by forfeiture, surrender, merger, or otherwise. To prevent such failure, the practice grew up of appointing trustees to preserve contingent remainders. A contingent remainder existing after the 31st December, 1844, takes effect notwithstanding the determination by forfeiture, surrender, or merger of the

(*o*) 7 Will. 4 & 1 Vict. c. 26, s. 3.
(*p*) 7 & 8 Vict. c. 76, s. 5; 8 & 9 Vict. c. 106, s. 6.

preceding estate of freehold (*q*); but such a remainder continued for some years to be in all cases liable to fail, unless it became vested at or before the determination of the particular estate by the expiration of the period for which it was originally limited. But every contingent remainder created by an instrument executed on or after the 2nd August, 1877, or by any will republished on or after that date which would have been valid as a springing or shifting use, or executory devise, or other limitation, had it not had a sufficient estate to support it as a contingent remainder is, in the event of the particular estate determining before the contingent remainder vests, capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use, or executory devise, or other executory limitation (*r*).

In all cases where a contingent remainder has not become vested at or before the determination of the particular estate, it should be seen that there is a proper limitation to trustees to preserve contingent remainders, or that the instrument is within the Contingent Remainders Act, 1877 (*s*).

See PERPETUITIES.

Requisition.

The devise contained in the testator's will, dated in July, 1877, *to such of his children as should attain the age of twenty-one years, would appear to have failed, as none of his children had attained twenty-one years at the time of his decease, and the will contained no devise to trustees to preserve contingent remainders; the testator's residuary devisee is therefore entitled to the property contracted to be sold, and his concurrence must be obtained.*

(*q*) The Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 8.
(*r*) Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33).
(*s*) *Ibid.*

CONVEYANCES.

It is unnecessary for persons taking estates or interests under indentures executed on or after the 1st January, 1845, to be parties to such indentures (*t*).

Prior to the 1st January, 1882, an estate of freehold could not be conveyed directly by any person to himself, or to any other person jointly with himself : consequently, if A., a person solely seised, wished to convey to himself and B. as joint tenants, it was necessary for him to convey to B. to the use of A. and B., as a conveyance from A. directly to himself and B. would pass the whole estate to B.

As a husband and wife were considered one person, a husband could not, before the date last referred to, convey directly to his wife, nor a wife to her husband; but freehold land and choses in action have since been capable of being conveyed by a person to himself jointly with another person or persons by the like means by which they might be conveyed by him to another person, and such land may in like manner be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person or persons (*u*).

It is, however, to be observed that this does not enable one person to convey property directly to another person, reserving to himself a life estate. In such a case the provisions of the Statute of Uses would be still required, and the conveyance would be by the grantor to the remainderman to the use of the grantor for life with remainder to the use of the remainderman in fee simple.

Another case not provided for is where property is to be conveyed by A. and B., who are jointly entitled, to one of themselves, A. for instance. Such a conveyance might be carried out if A. and B. are beneficially entitled by means of a release, but if A. and B. are executors or administrators the safest course is to make use of the Statute of Uses.

(*t*) 7 & 8 Vict. c. 76, s. 11; 8 & 9 Vict. c. 106, s. 5.
(*u*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 50.

With regard to leasehold estates, any person has been able since the 12th August, 1859, to convey them directly to himself and another person, or other persons, by the like means whereby he might convey them to another (*x*), and since the 31st December, 1882, inasmuch as the Married Women's Property Act, 1882, provides that after the commencement of the Act a married woman shall, in accordance with the provisions of the Act, be capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole*, it would seem that leaseholds can be conveyed by a husband to his wife, or by a wife to her husband (*y*).

Recitals are of importance and should be carefully perused because of the effect they may have in limiting the operative part of a deed. They are separately dealt with under the heading RECITALS.

Though since the 1st October, 1845, all hereditaments, corporeal as well as incorporeal, have lain in grant, the use of that word is not necessary to effect a conveyance, and any words showing the grantor's intention are sufficient (*z*).

The appurtenance clause is now invariably omitted in reliance on the Conveyancing Act, 1881 (*a*). The insertion, however, expressly, before the Act, or subsequently, impliedly by virtue of the Act, of this clause, probably added little, if anything, to the conveyance of the property as it was at the date of the conveyance, though it may be of importance as showing that no limitation was intended to be put upon the *primâ facie* right of enjoyment by the grantee (*b*).

The " all estate " clause, always inserted in conveyances prior to 1882, was of little or no use. It did not have the effect of passing property other than that specified in the

(*x*) 22 & 23 Vict. c. 35, s. 21.
(*y*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (1).
(*z*) 8 & 9 Vict. c. 106, s. 2; 44 & 45 Vict. c. 41, s. 49.
(*a*) 44 & 45 Vict. c. 41, s. 6.
(*b*) See *Broomfield* v. *Williams*, [1897] 1 Ch. 602; 66 L. J. Ch. 305; 76 L. T. 243; 45 W. R. 469.

recitals (*c*). It also is now invariably omitted in reliance on the Conveyancing Act, 1881 (*d*).

If the habendum is inconsistent with the grant it will have no effect; therefore, where by the habendum in a deed an estate of freehold purported to be limited to commence from a future day, it was held that the deed was not void, as the instrument contained an express grant of the life estate *in præsenti* which was not controlled by the habendum (*e*). If, however, the habendum is not inconsistent with the grant, explanatory words will be given effect to.

The tenendum was used before the statute Quia Emptores (*f*) to indicate of whom the feoffee was to hold the premises, and afterwards it was continued to show whether the premises were held in free socage or knight's service. It is, in modern conveyances, put very shortly and combined with the habendum.

The word *heirs* was necessary in deeds prior to 1882 in order to pass an estate of inheritance to any person other than a corporation, but in the case of deeds executed in and since that year it is sufficient, in limiting an estate in fee simple and in fee tail, to use the words *in fee simple* and *in tail* respectively in the place of the word *heirs* and *heirs of the body* (*g*). The word *successors* is still necessary in a conveyance to a corporation sole, but no words of limitation are required in a conveyance to a corporation aggregate. An equitable limitation by way of trust executed has the same construction as a legal limitation (*h*).

In conveying leaseholds mention is often made in the habendum, of the executors, administrators and assigns of the assignee; these words are, however, useless, as on the death of the assignee, his executors or administrators take

(*c*) *Neame* v. *Moorsom*, L. R. 3 Eq. 91, at p. 97; 36 L. J. Ch. 274; 15 W. R. 51; 12 Jur. (N. S.) 913.
(*d*) 44 & 45 Vict. c. 41, s. 63.
(*e*) *Boddington* v. *Robinson*, L. R. 10 Ex. 270; 44 L. J. Ex. 223; 33 L. T. 364; 23 W. R. 295.
(*f*) 18 Ed. 1, c. 1.
(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 51.
(*h*) *Re Whiston's Estate, Lovatt* v. *Whiston*, [1894] 1 Ch. 661; 63 L. J. Ch. 273; 70 L. T. 681; 42 W. R. 327; 8 R. 175.

by law, and the word "assigns" is not a word of limitation (*i*).

When land is being dealt with which is situate in Middlesex, Yorkshire, or Kingston-upon-Hull, it must be seen that the deeds relating to it have been duly registered, and the absence of or any irregularity in the usual memorandum of registration must be inquired into.

It is not usual to require evidence of identity of persons executing deeds; but when there are any circumstances giving rise to suspicion or doubt, it may occasionally be expedient to do so. If A., personating B., executes a deed in the name of B. purporting to convey B.'s property, no right or interest passes by the deed (*k*).

See APPOINTMENTS—CONSIDERATION—COVENANTS—LEGAL ESTATE—RECEIPT—RECITALS—STAMPS—TITLE DEEDS—USES.

Requisition.

The indenture of , 19 , has no memorandum of registration in the East Riding Registry indorsed: Was it duly registered, and, if so, what is the reference number?

CONVICTS, TRAITORS AND FELONS.

Prior to the 4th July, 1870, attainder of treason caused a forfeiture to the Crown of the convict's freehold lands, while attainder of felony (*i.e.*, sentence of death or of outlawry on a capital offence) was a cause of forfeiture of such lands to the Crown for a year and a day, after which the lands escheated to the convict's feudal lord. The conviction related back, making dealings by the convict between the offence and conviction void. Attainder of treason or felony was a cause of forfeiture to the Crown of

(*i*) *Osborne* v. *Rowlett*, 13 Ch. D. 774, at p. 777; 49 L. J. Ch. 310.
(*k*) *Re Cooper*, *Cooper* v. *Vesey*, 20 Ch. D. 611, *per* Day, J., at p. 623; 51 L. J. Ch. 862; 47 L. T. 89; 30 W. R. 648.

personal property, including leaseholds, and caused an escheat of copyhold lands to the lord of the manor.

Since the 3rd July, 1870, no conviction or judgment for treason or felony causes a forfeiture or escheat (*l*), and outlawry in civil actions was abolished in the year 1879 (*m*); it is now practically obsolete in criminal cases, but if it occurred would still give rise to forfeiture.

No action can be brought by a convict (that is to say, a person against whom judgment of death or penal servitude has been pronounced upon any charge of treason or felony) while his sentence is uncompleted and he has not been pardoned (*n*), and he is incapable during such time of alienating or charging any property or of making any contract (*n*), except as to property acquired while lawfully at large under any licence (*o*). Neither convicts, traitors, nor felons are, however, under any incapacity to make wills.

The Crown may appoint an administrator of any convict's property (*p*), in whom when appointed the convict's property vests (*q*); such administrator can let, mortgage, convey, and transfer any part of such property as he thinks fit (*r*), but he cannot execute a disentailing deed (*s*). The property reverts to the convict or his representatives on completion of sentence, pardon, or death (*t*).

Trust and mortgaged properties do not however vest in the administrator of a convict trustee or mortgagee, but remain in the convict so long as he continues trustee or mortgagee, and on his death survive to his co-trustee or descend to his representative as if he had not become a convict (*u*); but this does not affect the title to the property so far as relates to any beneficial interest therein of such trustee or mortgagee (*x*).

(*l*) 33 & 34 Vict. c. 23, s. 1.
(*m*) 42 & 43 Vict. c. 59.
(*n*) 33 & 34 Vict. c. 23, s. 8. (*o*) *Ibid.* s. 30.
(*p*) *Ibid.* s. 9. (*q*) *Ibid.* s. 10. (*r*) *Ibid.* s. 12.
(*s*) *Gaskell and Walter's Contract*, [1906] 2 Ch. 1; 75 L. J. Ch. 503; 94 L. T. 658.
(*t*) 33 & 34 Vict. c. 23, s. 18.
(*u*) 4 & 5 Will. 4, c. 23, s. 5; 13 & 14 Vict. c. 60, s. 46; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 48.
(*x*) 4 & 5 Will. 4, c. 23, s. 5; 13 & 14 Vict. c. 60, ss. 46 and 47; 56 & 57 Vict. c. 53, s. 48.

The High Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony (*y*).

Requisition.

A. B. would appear to be a convict within the meaning of the Forfeiture Act, 1870 : *Has any administrator of his property been appointed? If so, such administrator is the proper person to convey A. B.'s share.*

CO-OWNERS.

See COPARCENERS—JOINT TENANTS—TENANTS BY ENTIRETIES—TENANTS IN COMMON.

COPARCENERS.

An estate of inheritance which descends from the ancestor to two or more persons together is said to be held in coparcenary. Coparcenary arises either by common law or particular custom : By common law where a person seised in fee simple or in fee tail dies, and his next heirs are two or more females, in this case they all inherit and are called coparceners (*z*) : By particular custom where lands descend, as in gavelkind, to males in equal shares —*e.g.*, to sons, brothers, or uncles of an intestate. When the coparcenary arises in either way the coparceners put together make but one heir, and have but one estate among them (*a*).

Coparceners always claim by descent, unlike joint tenants, who always claim by purchase. Therefore, if two sisters purchase lands, to hold to them and their heirs, they are not coparceners, but joint tenants (*a*), and hence it likewise

(*y*) 56 & 57 Vict. c. 53, s. 25 (1).
(*z*) Blackstone, Vol. II., p. 187.
(*a*) *Ibid.*

follows that no lands can be held in coparcenary except estates of inheritance, which are of a descendible nature (*b*).

There is no unity of time necessary to an estate in coparcenary : Thus if a man has two daughters to whom his estate descends in coparcenary, and one dies before the other, the surviving daughter and the heir of the other, or when both are dead their two heirs, are still coparceners. Nor is there any *jus accrescendi* or survivorship between coparceners, for each part descends severally to their respective heirs, though the unity of possession continues; and so long as the lands continue in a course of descent and united in possession, so long are the tenants, whether male or female, called coparceners (*b*).

A coparcener can dispose of his or her share by deed or by will, and the coparcenary is thereby destroyed.

On the death intestate of a coparcener, a co-heiress of the purchaser of land, her son, notwithstanding sect. 2 of the Inheritance Act, 1833 (*c*), stands in her place *quoad* her share (*d*); and this doctrine applies equally in favour of her more remote lineal descendants : Accordingly, on the death intestate of a son of such a coparcener without issue, the entire share was held to descend to a nephew of such son, the nephew being a grandson of the coparcener, and no part to the descendants of the sister of the coparcener (*e*).

It has always been possible for any one of several coparceners to compel partition, a power which tenants in common and joint tenants did not acquire till the reign of Henry VIII. This is, according to Littleton, the reason why they are called coparceners (*f*).

Requisition.

It appears from the abstract of title that the property contracted to be sold is vested in Miss Jane Smith and

(*b*) Blackstone, Vol. II., p. 188.
(*c*) 3 & 4 Will. 4, c. 106.
(*d*) *Cooper* v. *France*, 19 L. J. Ch. 313; 14 Jur. (O. S.) 214.
(*e*) *Re Matson, James* v. *Dickinson*, [1897] 2 Ch. 509; 66 L. J. Ch. 695; 77 L. T. 69.
(*f*) Litt. s. 241.

her nephew John James as coparceners. It is presumed that the latter is of age and will join Miss Smith in the conveyance.

COPYHOLDS.

An abstract of title to copyhold property consists for the most part of extracts from copies in the vendor's possession of entries on the Court Rolls. The abstract should be examined with the copies and verified by searching the rolls.

The conveyance of copyholds is effected by surrender and admittance. A surrender may be either in or out of Court. No presentment of a surrender out of Court is now required prior to its enrolment (*g*).

When a surrender takes place out of Court the memorandum is signed by the parties and duly stamped, and is subsequently copied into the Court Rolls; but when it is effected in Court the entry in the Court Rolls is the original, and a copy is made by the steward and stamped like a purchase deed and handed to the purchaser. It was formerly the practice in both cases for the surrender and admittance to be prepared by the steward of the manor, but it is now quite usual for them to be prepared by the purchaser's solicitor.

As covenants for title form no part of the surrender, it is usual to have a separate deed, called a covenant to surrender. A covenant to surrender being a conveyance within the meaning of the Act, the statutory covenants for title under the Conveyancing Act, 1881 (*h*), are incorporated in it when the prescribed words are used, but they cannot be incorporated in the surrender itself, as it is not a deed (*i*).

It is important to remember that on a conveyance of copyholds it is the surrender which requires to be stamped *ad valorem*, and the surrender in transactions under 500*l*.

(*g*) 4 & 5 Vict. c. 35, ss. 89, 91.
(*h*) 44 & 45 Vict. c. 41, s. 7.
(*i*) *Ibid.* s. 7 (5).

must, accordingly, contain the usual certificate. The covenant only requires a ten-shilling stamp, but where the consideration does not exceed 75*l*., it can be stamped *ad valorem* as well as the surrender, and, of course, it should then contain the certificate.

Where a vendor has covenanted to surrender copyholds and the purchase-money has been paid, even though the deed contain no declaration of trust, he and his heirs are trustees for the purchaser, and a vesting order can be obtained (*k*).

The equitable interest in copyholds is capable of being assigned in the same manner as any other equitable interest, and the assignee on taking a surrender from the legal owner can insist upon being admitted; and that upon payment of a single fine, if there has been no surrender to the assignor (*l*).

Formerly, before copyhold property could be devised by will, its previous surrender to the uses of the will was necessary; but since the 11th July, 1815, such surrender has been unnecessary (*m*), and under the same statute an unadmitted surrenderee can devise his interest, but double fees are payable to the lord and steward upon the admittance of the devisee (*n*).

The admittance of a tenant for life is the admittance of the remainderman, but not of a reversioner. The doctrine that the admittance of the tenant for life is the admittance of the remainderman only applies where there is no custom to the contrary. In practice, the steward can almost invariably find some instance where the remainderman has been admitted, and this would seem to be sufficient evidence of a custom to the contrary. The customary heir can surrender the estate without being first admitted, as may also an equitable tenant in tail.

An admittance may, since the 15th September, 1887, be effected by attorney (*o*).

(*k*) *Re Cuming*, L. R. 5 Ch. 72; 21 L. T. 739.
(*l*) *Rex* v. *The Lord of the Manor of Hendon*, 1 R. R. 527; 2 T. R. 484.
(*m*) 55 Geo. 3, c. 192; 7 Will. 4 & 1 Vict. c. 26, s. 3.
(*n*) *Reg.* v. *The Lady of the Manor of Wilberton*, 29 L. T. (O. S.) 126.
(*o*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 2; Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 84 (2).

Devisees in trust for sale must be admitted before they can convey. It is, however, the usual plan to direct trustees of a will to sell copyholds without devising the property to them, in which case the trustees are not admitted, but the purchaser from them is, on payment of a single fine (*p*); the conveyance is effected by bargain and sale or appointment. A limited owner under the Settled Land Acts can sell and convey copyholds, and a purchaser will be admitted on production of the conveyance and the settlement without surrender (*q*). This appears to apply even if there is no tenant on the Rolls at the time of the conveyance by the tenant for life (*r*).

There may be estates tail in copyholds in manors where a custom exists for such estates. The entail, if legal, must be barred by surrender; if equitable, by surrender or deed (*s*). The deed must be entered on the Court Rolls within six months of execution (*t*).

In manors where there is no custom to entail the effect of a limitation to a person and the heirs of his body is to convey a customary conditional fee simple and to leave a possibility of reverter in the grantor. While issue capable of inheriting the conditional fee simple are in existence, the conditional fee simple may be converted into a customary fee simple by surrender.

The customs of manors differ in many particulars on which the title may depend, and a purchaser's solicitor should inquire as to such customs when an abstract discloses any event which might be affected by them; *e.g.*, who on an intestacy is the customary heir; what is the custom as to freebench; what fines are payable and on what events, and whether any are owing.

Mortgages of copyholds are effected by covenant to surrender, followed or not by a conditional surrender and

(*p*) *Garland* v. *Mead*, L. R. 6 Q. B. 441; 40 L. J. Q. B. 179; 24 L. T. 421; 19 W. R. 1156.
(*q*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20.
(*r*) *Re Naylor and Splendler's Contract*, 34 Ch. D. 217; 56 L. J. Ch. 453; 56 L. T. 132; 35 W. R. 219.
(*s*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 50.
(*t*) *Ibid.* s. 51.

admittance. A mere covenant to surrender forms a good equitable security, but would not be effectual against a subsequent purchaser or incumbrancer without notice who obtained the legal estate by admission. The usual course is for the mortgagor to covenant to surrender, and to surrender conditionally, but for the mortgagee not to be admitted; satisfaction is entered when the mortgage is paid off, and the expense of a surrender and two admittances, which would be necessary if the mortgagee were admitted, is saved: If, however, admittance takes place, the title of the surrenderee relates back to the date of the conditional surrender, so that no risk is run by the mortgagee not being admitted forthwith.

The Dower Act does not apply to copyholds (*u*).

The wife's copyhold estates of inheritance descend on her death intestate to her customary heir subject to the husband's life estate by the curtesy, where such an estate is in accordance with the custom.

A lease by a copyholder extending beyond the term of a year is a cause of forfeiture to the lord of the manor unless a special custom to the contrary exists; but the lord can grant a licence to lease, and such licence is valid for the period during which his estate lasts, and a tenant for life may grant to a copyholder a licence to make any such lease as a tenant for life is empowered by the Settled Land Acts to make of freeholds (*x*). The lease, inasmuch as it arises out of the seisin of the freeholder, unlike copyhold assurances in general, requires registration under the Middlesex and Yorkshire Acts in cases where other leases require registration.

For the purpose of forfeiture an agreement for a lease is not an actual lease. Even where actual leases are made the forfeiture is never in practice enforced.

So-called customary freeholds are copyholds. They frequently occur in manors in the ancient demesne of the Crown. In this case, they must be distinguished from the

(*u*) *Smith* v. *Adams*, 24 L. J. Ch. 258; 23 L. T. (O. S.) 325; 2 W. R. 698; 18 Jur. 968; 5 De G. M. & G. 712; 18 Beav. 499; 2 Eq. R. 1001.
(*x*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 14.

land in the same manors, which is said to be held by the tenure of ancient demesne. Such land is freehold, but may be subject to special customs.

See COVENANTS—CURTESY—DOWER AND FREEBENCH—ENFRANCHISEMENT OF COPYHOLDS.

Requisitions.

1. *What is the custom of A. manor with regard to* (a) *fines*, (b) *heriots ?*

2. *Is there any custom to entail in the manor of B.?*

3. *Is there any custom of C. manor for a wife to have freebench, and, if so, does it extend to lands disposed of by the husband during his lifetime ?*

4. *Has the husband of a tenant of land part of D. manor any right under the customs of that manor to an estate by the curtesy, and, if so, to what does such estate extend ?*

5. *Has satisfaction been entered on the court rolls of the conditional surrender by way of mortgage, dated , 19 ? If not, it must be done.*

6. *Are there any rents or fines unpaid, or suits or services unperformed, or has any event happened which entitles or may entitle the lord of the manor to forfeiture ?*

7. *Does any custom exist in the manor of E. for copyholders to grant leases ? If not, the licence of the lord to the lease of* 19 *must be produced.*

8. *A certificate of the steward of the manor must be produced to prove that, according to the custom of the manor, lands descend on an intestacy to the* [*youngest son*] *as alleged.*

9. *Was the consent of the Land Commissioners* [or *Ministry of Agriculture*] *given to the grant of the piece of waste comprised in the indenture of* 19 *? Is there a custom of the manor of F. for the lord to grant portions of the waste as copyholds, and if so, is not the consent of the homage required ?* (a) *The consent of the Land Commissioners* [*or Ministry of Agriculture*]

must be abstracted and produced; and (b) *the presentment showing the consent of the homage must be abstracted, or the purchaser must be satisfied that it was not required by the custom of the manor.*

10. *The apportionment of the rent of £ must be proved by the production of the certificate or extract from the court rolls dealing with the same.*

11. *Are there any quit rents or other incidents of tenure to which the property in question is subject?*

CORPORATIONS.

A corporation is a fictitious person created either by the Crown or Parliament, endowed with a capacity to acquire rights and incur obligations. It has a continuous legal identity notwithstanding successive changes by death or retirement of the person or persons comprising it. Corporations are divided into corporations sole and corporations aggregate.

(i.) Corporations Sole.

This class includes the King, archbishops and bishops holding sees, some canons, deans, archdeacons, and prebendaries, all parsons and vicars, and the holders of a few other offices, such as the Official Trustee of Charity Land and the Public Trustee.

When it is intended to limit an estate in fee simple to a corporation sole other than the Crown, the words "and his successors" are necessary, as the provisions of the Conveyancing Act, s. 51, do not apply; but the Crown can take a fee simple estate without words of limitation.

The lands belonging to the Crown are under the management of the Commissioners of Works, who are given extensive powers of selling, exchanging, and leasing Crown property (*y*).

(*y*) Crown Lands Act, 1829 (10 Geo. 4, c. 50).

Lands belonging to ecclesiastical corporations sole cannot, as a rule, be disposed of except under the provisions of some Act of Parliament.

An incumbent has statutory power, on certain consents being obtained and notices given, to sell the house of residence if inconveniently situated or under special circumstances (*z*), and by other statutes the glebe land. This subject is dealt with under GLEBE LANDS.

(ii.) Corporations Aggregate.

These may be divided into companies or societies incorporated by charter from the Crown and those incorporated by Act of Parliament. The latter may be again subdivided into companies and societies incorporated by special Act of Parliament, and those incorporated by and registered under a general Act of Parliament.

The last-mentioned class are by far the most numerous, and three kinds—building societies, friendly societies, and companies registered under the Companies Acts—have been considered of sufficient importance to be dealt with separately (*a*). No words of limitation are necessary when real estate is limited to a corporation aggregate. The words "and their successors," though not strictly appropriate to such a corporation, are frequently used.

The best mode of dividing corporations aggregate for practical purposes is according to their object, viz. :

Ecclesiastical.—Under this head are included the Ecclesiastical Commissioners, the Chapter of St. Paul's, and similar bodies. They cannot in general deal with land otherwise than in accordance with such powers as have been conferred upon them by statute.

Professional.—Such as the Law Society, the College of Physicians, the Institute of Actuaries, the Institute of Chartered Accountants.

Charitable.—Including hospitals. Such institutions are not, as a rule, able to part with land once acquired. The provisions of the Mortmain and Charitable Uses Act, 1888,

(*z*) 1 & 2 Vict. c. 23, s. 7.
(*a*) *Ante*, pp. 56, 72, and *post*, p. 185.

whereby every assurance of land, with certain exceptions, for the benefit of any charitable uses has to be made in accordance with the requirements of the Act, are dealt with under the heading MORTMAIN AND CHARITABLE USES.

Educational.—Including colleges and universities. Since the 11th October, 1898, a university or college has been able to exercise any of the powers of sale, enfranchisement, partition, and leasing conferred on a tenant for life by the Settled Land Acts, the property belonging to the university or college being for that purpose deemed the subject of a settlement, and the Ministry of Agriculture substituted for the trustees of the settlement and for the Court. The consent of the Ministry of Agriculture is necessary to the exercise of these powers, except in the case of a lease not containing an option of purchase (*b*).

Literary, Scientific, and Artistic.—Such as the Royal Society and the Royal Academy.

Civil.—Though Kyd stated that all civil corporations have an unlimited power over their respective properties and may alienate in fee or for years or for life or in tail (*c*), the truth of this statement is exceedingly doubtful.

Municipal corporations cannot purchase or hold more than five acres of land (*d*) without the approval of the Ministry of Health, which has superseded the Local Government Board (*e*), or sell or mortgage any corporation land without such approval (*f*). The same approval is requisite to enable a county council to alienate its lands (*g*), or to enable an urban or district council to let lands which they can conveniently spare (*h*).

Mercantile.—This class may be divided into public and private.

The former include railway, tramway, canal, gas, and water companies. They cannot in general deal with their land otherwise than as they are specially empowered to by

(*b*) Universities & Colleges Estates Act, 1898 (61 & 62 Vict. c. 55), s. 1.
(*c*) 1 Kyd, Corporations, 108.
(*d*) 45 & 46 Vict. c. 50, s. 105.
(*e*) *Ibid.* s. 107.
(*f*) *Ibid.* s. 108.
(*g*) 51 & 52 Vict. c. 41, s. 64.
(*h*) 38 & 39 Vict. c. 55, s. 177.

Act of Parliament, and they cannot therefore validly mortgage it without being so empowered (*i*).

The latter include all banking and trading companies, assurance and building societies. Such companies are usually registered under the Companies Acts or under the Building Societies Acts, to which headings the reader is referred.

(iii.) Quasi Corporations.

It sometimes happens that land has by an old conveyance been conveyed to a body of persons which has no corporate existence and has no power to hold land, such as the churchwardens of a parish, and has been held by such body of persons as if such body was a corporation. It will then be impossible to trace what has become of the legal estate. Usually such body will hold the land upon some charitable trust. The question arises whether a purchaser can safely take a conveyance from the persons who, for the time being, compose the body of persons. The answer appears to be that the title could not be forced upon an unwilling purchaser, but a willing purchaser runs no practical risk in accepting the title. If there is a charitable trust, the consent of the Charity Commissioners should, however, be obtained. In cases where there is a charitable trust the title can be mended by a scheme of the Board of Charity Commissioners constituting the body of persons trustees of the charity and vesting the legal estate in the Official Trustee of Charity Lands.

(iv.) As to Corporations generally.

Every corporation has a common seal. The seal is required as authenticating the concurrence of the whole corporate body, and is a necessity inherent in the very nature of a corporation (*k*).

The private regulations as to the mode of affixing the seal, and as to the signature and counter-signature of parti-

(*i*) *Gardner* v. *London, Chatham & Dover Rail. Co.*, L. R. 2 Ch. 201; 36 L. J. Ch. 323; 15 L. T. 522; 15 W. R. 324.

(*k*) *Mayor and Corporation of Ludlow* v. *Charlton*, 6 M. & W. 815; 8 C. & P. 242; 4 Jur. 657; 10 L. J. Ex. 75.

cular officers, need not, it seems, be inquired into by the purchaser, as all such formalities are directory only (*l*), and will not bind a purchaser having no notice of the need of them.

At common law corporations had power to take and hold land : Since Magna Charta restrictions have been imposed with a view to prevent feudal lords being deprived of their services. These restrictions are dealt with elsewhere (*m*).

Other disabilities are :—

Corporations cannot be seised to a use, and cannot therefore convey by bargain and sale.

They could not formerly be joint tenants, though they might be tenants in common (*n*); but since the 8th August, 1899, they have been capable of acquiring and holding real and personal property in joint tenancy (*o*).

They cannot be copyholders.

Property in form duly conveyed to a corporation becomes vested in such corporation, even though the acquisition of it was *ultra vires* (*p*). A purchaser is consequently not concerned to inquire whether a company through whom a vendor claims was acting within its powers in purchasing, but this does not apply to an absolute statutory prohibition.

When a corporation acquires land which under the enabling statute is either expressly or by implication to be devoted to specified purposes, it cannot employ it for any other purposes, and a contract by the corporation purporting to restrict the uses for any of such specified purposes would be void (*q*).

Lands acquired under compulsory powers contained in the Lands Clauses Act, 1845, are subject to provisions which are dealt with under the title Superfluous Lands.

See Building Societies—Companies registered under the Companies Acts—Glebe Lands—Mortmain and Charitable Uses—Superfluous Lands.

(*l*) *Allen* v. *Sea, Fire and Life Assurance Society*, 9 C. B. 574; 19 L. J. (C. P.) 305; 14 Jur. 870, *n*.

(*m*) *Post*, p. 287 *et seq.* (*n*) Co. Litt. 190 a.

(*o*) Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20).

(*p*) *Ayers* v. *South Australian Banking Co.*, L. R. 3 P. C. 548; 40 L. J. P. C. 22; 19 W. R. 860; 7 Moore, P. C. C. (N. S.) 432.

(*q*) *Ayr Harbour Trustees* v. *Oswold*, 8 App. Cas. 623.

Requisitions.

1. *The consent of the Ministry of Agriculture to the sale of Whiteacre by K.'s College must be shown.*

2. *Has the X. County Council obtained the consent of the Ministry of Health to the sale of Blackacre? Such consent must be produced.*

COURT.

See ACTION—JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF—ORDER—VESTING DECLARATIONS AND ORDERS.

COVENANTS.

In conveyances (other than customary assurances conferring the right to admittance to copyholds, not made by deed) executed after the 31st December, 1881, certain covenants for title are implied (*r*). They are as follows :—

A. In a conveyance (other than a mortgage or a marriage settlement) for valuable consideration by a person expressed to convey as beneficial owner the covenants implied are for good right to convey, for quiet enjoyment, freedom from incumbrances, and for further assurance. These covenants extend to the acts not only of the person who conveys, but also of those persons through whom he derives title otherwise than by purchase for value (which is not deemed to include a conveyance in consideration of marriage).

B. In a conveyance (other than a mortgage or a marriage settlement) of leasehold property for valuable consideration by a person expressed to convey as beneficial owner, as well as the covenants referred to in A. above, a covenant is implied that the lease is a good, valid, and effectual one, and

(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7.

that the rents, covenants, and conditions therein have been paid, observed, and performed. The covenant extends not only to the acts of the person who conveys, but also of anyone through whom he derives title otherwise than by purchase for value (which is not deemed to include a conveyance in consideration of marriage).

C. In a conveyance by way of mortgage by a person expressed to convey as beneficial owner is implied an absolute covenant that the mortgagee has a right to convey, for quiet enjoyment and freedom from incumbrances, and for further assurance, such covenants not being limited to the acts of the mortgagor and his predecessors in title.

D. In a conveyance by way of mortgage of leasehold property by a person expressed to convey as beneficial owner, as well as the covenants referred to in C. above, there is also implied an unqualified covenant for the validity of the lease and for payment of rent and performance of the covenants and conditions thereof.

E. In a conveyance by way of settlement by a person expressed to convey as settlor, a covenant is implied for further assurance limited to the person conveying and every person subsequently claiming title under him.

F. In any conveyance by a person expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition or under an order of the Court, is implied a covenant, extending only to such person's own acts, that the person conveying has done no act to incumber.

If, although it is the fact, a contract does not show and the purchaser was unaware that the vendor is a trustee, mortgagee or other person who usually enters into limited covenants, it would appear on principle that the vendor should enter into the usual covenants, though there does not seem to be any authority to this effect.

Where a person conveys by direction of any person expressed to direct as beneficial owner, the person giving the direction, whether he is expressed to convey as beneficial owner or not, is deemed to be so expressed, and a covenant on his part is implied accordingly (*s*).

Where a wife is expressed to convey as beneficial owner, and the husband also conveys as beneficial owner, the wife is deemed to convey by direction of the husband as beneficial owner, and in addition to the covenant implied on her part, there is also implied a covenant by the husband as the person giving that direction, and a covenant by him in the same terms as the covenant implied on the part of the wife (*t*). The effect of this, where the wife and husband are each expressed to convey as beneficial owner, is that covenants are implied by the wife binding her separate property, and by the husband both as beneficial owner and in like terms as the wife's implied covenant. With regard to the wife's covenant, it would, in the case of conveyances made before 1883, be enforceable only against separate estate to which she was entitled, free from any restraint on anticipation at the time the covenant was entered into and which remained at the time when judgment was obtained (*u*) : In the case of conveyances made after 1882, but before the 5th December, 1893, if the wife had separate property unrestrained from anticipation at the time the covenant was entered into, such covenant would be enforceable against such separate property and also against separate property not restrained from anticipation which she thereafter acquired (*x*); but the removal, by reason of the death of the husband, of a restraint on anticipation which, in his lifetime, prevented the wife's separate property from being made available, did not make the property

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (2).
(*t*) *Ibid.* s. 7 (3).
(*u*) *Pike* v. *Fitzgibbon*, 17 Ch. D. 454; 50 L. J. Ch. 394; 44 L. T. 562; 29 W. R. 551.
(*x*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (3) and (4); *Palliser* v. *Gurney*, 19 Q. B. D. 519; 56 L. J. Q. B. 546; 35 W. R. 760; 51 J. P. 520; *Stogdon* v. *Lee*, [1891] 1 Q. B. 661; 60 L. J. Q. B. 669; 64 L. T. 494; 39 W. R. 467; 55 J. P. 533.

liable (*y*); but now, when the conveyance has been made on or after the 5th December, 1893, every contract entered into by a married woman otherwise than as agent is deemed to be entered into with respect to and to bind her separate property, whether she is or is not, in fact, possessed of any at the time she enters into the contract, and such contract binds all separate property which she may at the time or thereafter be possessed of, and which she is not restrained from anticipating (*z*).

The provisions referred to above apply to covenants to surrender and other deeds conferring a right to admittance to copyhold or customary lands, but do not apply to demises by way of lease at a rent (*a*). Where the character in which a party conveys is not stated, no covenant is implied (*b*).

An implied covenant may be varied or extended by deed (*c*). The benefits of implied covenants run with the land, but a purchaser who can obtain the legal estate cannot annul his contract on the ground that he is unable to get a complete string of covenants for title (*d*).

The use of the word " demise " in a lease imports into it a covenant for quiet enjoyment, and even the mere relation of landlord and tenant has been held to imply an undertaking to that effect (*e*). The effect of the covenant usually inserted in leases is to qualify such implied covenant. It is, however, by no means clear that the covenant implied is necessarily an absolute one (*f*).

The mention of the heirs or assigns, or executors, administrators, or assigns of the covenantee, in deeds entered into after the 31st December, 1881, is not necessary for the

(*y*) *Pelton Brothers* v. *Harrison*, [1891] 2 Q. B. 422; 60 L. J. Q. B. 742; 65 L. T. 514; 39 W. R. 689.
(*z*) Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 1.
(*a*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (5).
(*b*) *Ibid.* s. 7 (4).
(*c*) *Ibid.* s. 7 (7).
(*d*) *Re Scott and Alvarez's Contract*, [1895] 1 Ch. 596; 64 L. J. Ch. 376; 72 L. T. 455; 12 R. 474.
(*e*) *Budd-Scott* v. *Daniell*, [1902] 2 K. B. 351; 71 L. J. K. B. 706; 87 L. T. 392; 51 W. R. 134.
(*f*) *Baynes & Co.* v. *Lloyd & Sons*, [1895] 2 Q. B. 610; 64 L. J. Q. B. 787; 73 L. T. 250; 59 J. P. 710; 14 R. 678.

purposes of making a covenant run with the land if such covenant would otherwise so run (*g*), nor since that date need the heirs of the covenantor be named, as all covenants, though not so expressed, operate to bind the heirs and real estate as well as the executors and administrators (*h*); but in order that the land may be bound in equity in the hands of assigns with notice, the assigns of the covenantor should be named (*i*) in covenants intended to run with it.

In considering whether a good title is shown, the question often arises whether the purchaser would be bound by covenants relating to the land entered into by the vendor or his predecessors in title : The following are the chief points to bear in mind on the subject :—Obligations which have been entered into by a vendor or his predecessor in title on the purchase of freeholds may, except in the case of covenants restrictive of the user of the land and options to purchase, be disregarded by a purchaser, as there is no privity between a purchaser and the person in whose favour such obligations were entered into; consequently they do not run with the land. With regard to purchases of leasehold property, the rents and covenants remain constantly binding on the original lessee notwithstanding any assignment which he may make; but an assignee is only liable as such to the landlord for the rent which may be unpaid, and for the breach, during the time the term remains vested in him, of such covenants as relate to a thing *in esse* parcel of the premises demised. Covenants which concern a thing not *in esse* at the time of the demise made, but to be done on the land afterwards, bind the covenantor but not the assign if he is not named (*k*).

Covenants not relating to the premises demised will not bind assigns even if named, so that if an underlessee takes from his landlord a covenant to indemnify him against the forfeiture of the demised property in consequence of the

(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 58.
(*h*) *Ibid.* s. 59.
(*i*) *Wilson* v. *Hart*, L. R. 1 Ch. 463; 35 L. J. Ch. 569; 14 L. T. 499; 14 W. R. 748; 12 Jur. (N. S.) 460.
(*k*) *Spencer's Case*, 5 Rep. 16 a.

non-repair of other property contained in the head lease, he will not be able to sue the assign of his landlord if such assign allows the head lease to be forfeited in consequence of such want of repair (*l*).

The following covenants are of common occurrence in leases and run with the property :—To pay rates and taxes ; to paint outside and inside ; to repair ; to deliver up at end of term in good repair ; to insure ; not to carry on on the premises particular occupations ; not to assign without leave of lessor ; to relieve the lessor from burdens in relation to the premises imposed by Act of Parliament or local or public authorities ; to cultivate lands in a specified manner.

On the sale of leasehold property, if and so far as a contrary intention is not expressed in the contract of sale, the following provisions apply : In the case of a lease or underlease, on the production of the receipt for the last payment due for rent thereunder before the date of actual completion of the purchase, the purchaser must assume, unless the contrary appears, that all the covenants and provisions of the lease or underlease, as the case may be, have been duly performed and observed up to the date of actual completion of the purchase (*n*) ; and as regards an underlease, the purchaser must further assume that all rent due under every superior lease has been paid, and all the covenants and provisions of every superior lease have been duly performed and observed up to that date (*o*). The above provisions do not apply to any rent such as a peppercorn rent, which is rendered and not paid (*p*).

The production of a receipt for rent being *primâ facie* evidence of the due performance of the covenants in the lease or underlease, as the case may be, and the acceptance of rent with knowledge of a breach of covenant being an implied waiver of a lessor's right to determine a lease in consequence of such breach, the last receipt for rent should

(*l*) *Dewar* v. *Goodman*, [1908] 1 K. B. 94 ; 77 L. J. K. B. 169 ; 97 L. T. 885.
(*n*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (4), (5).
(*o*) *Ibid.* s. 3 (5).
(*p*) *Re Moody and Yates' Contract*, 28 Ch. D. 661 ; 30 Ch. D. 344 ; 54 L. J. Ch. 886 ; 53 L. T. 845 ; 33 W. R. 785.

always be called for on a purchase of leasehold property. A purchaser is frequently bound by the conditions to accept the receipt as conclusive evidence, but where there is no such condition it is only *primâ facie* evidence, and cannot be relied upon when the contrary appears (*q*).

Inquiry should be made before completion of a purchase of leaseholds whether any notice has been received from the lessor of want of repair to the premises in accordance with the covenants.

In addition to those cases where a purchaser is bound by covenants which run with the land, are cases where a party is not permitted by the Court to use his land in a manner inconsistent with the contract relating to it entered into by a previous owner, and with notice of which he purchased (*r*); but only such a covenant as can be complied with without expenditure of money will be enforced against the assign on this ground (*s*); and a covenant will not be enforceable against an assign unless it is for the benefit of property belonging to the covenantee (*t*). A restrictive covenant which does not create any estate or interest in land does not offend against the rule against perpetuities (*u*). Where land is conveyed subject to covenants by the purchaser as to user for the benefit of the vendor and other purchasers, and the acts of the person for whose protection the covenants were entered into have so altered the character and condition of the adjoining lands that the restriction in the covenant ceases to be applicable according to the intent and spirit of the contract, a Court of Equity will not interpose to enforce the covenant, but will leave the parties to their remedy (if any) at law (*x*).

(*q*) *Re Highett and Bird's Contract*, [1902] 2 Ch. 214; 71 L. J. Ch. 508; 87 L. T. 159; 50 W. R. 424.

(*r*) *Tulk* v. *Moxhay*, 18 L. J. Ch. 83; 13 L. T. (O. S.) 21; 13 Jur. 89; 2 Ph. 774; 1 H. & Tw. 105; *Wilson* v. *Hart*, L. R. 1 Ch. 463; 35 L. J. Ch. 569; 14 L. T. 499; 14 W. R. 748; 12 Jur. (N. S.) 460.

(*s*) *Haywood* v. *Brunswick Building Society*, 8 Q. B. D. 403; 51 L. J. Q. B. 73; 45 L. T. 699; 30 W. R. 299; 46 J. P. 356.

(*t*) *Formby* v. *Barker*, [1903] 2 Ch. 539; 72 L. J. Ch. 716; 89 L. T. 249; 51 W. R. 646; *London County Council* v. *Allen*, [1914] 3 K. B. 642.

(*u*) *London & South Western Rail. Co.* v. *Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620.

(*x*) *Duke of Bedford* v. *The Trustees of the British Museum*, 2 My. & K. 552; 2 L. J. Ch. 129.

Where a restrictive covenant has been openly broken for upwards of twenty years, it will be presumed that there has been a waiver or release (*y*).

As a general rule, a purchaser of property sold without the particulars disclosing restrictive covenants is not bound to accept the title if the property is found to be subject to such covenants (*z*). But the Court will not enforce with compensation a contract, which does not expressly provide for compensation, against a vendor innocently selling without mentioning restrictive covenants (*a*). If the purchaser was aware of the restrictive covenants at the time he entered into the contract, and the contract was silent as to the title to be shown, he would probably not be able to successfully object to the title on the ground of such covenants; but if the contract expressly provided for a good title being shown, the purchaser can so object, even if he was aware of the restrictions at the time he entered into his contract (*b*).

If a lease is subject to onerous covenants of an unusual character, a purchaser is not bound to complete, unless, before the agreement was made, he had a fair opportunity of ascertaining for himself the terms of such covenants (*c*).

Notice to a purchaser of a lease is constructive notice of its contents (*d*); provided that he has had a fair opportunity of ascertaining what they were (*e*).

Although it is not necessary for a covenantee to be a party to a deed, a covenant cannot in general be made with non-existent persons, but the benefit of a covenant running with the land may be taken by persons claiming under the

(*y*) *Hepworth* v. *Pickles*, [1900] 1 Ch. 108; 69 L. J. Ch. 55; 81 L. T. 818; 48 W. R. 184.

(*z*) *Re Higgins and Hitchman's Contract*, 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; 46 J. P. 805; *Ellis* v. *Rogers*, 29 Ch. D. 661; 53 L. T. 377.

(*a*) *Rudd* v. *Lascelles*, [1900] 1 Ch. 815; 69 L. J. Ch. 396; 82 L. T. 256; 48 W. R. 586.

(*b*) See *Re Gloag and Miller's Contract*, 23 Ch. D. 320; 52 L. J. Ch. 654; 48 L. T. 629; 31 W. R. 601.

(*c*) *Reeve* v. *Berridge*, 20 Q. B. D. 523; 57 L. J. Q. B. 265; 58 L. T. 836; 36 W. R. 517; 52 J. P. 549.

(*d*) *Hall* v. *Smith*, 14 Ves. jun. 426; 9 R. R. 313.

(*e*) *Hyde* v. *Warden*, 3 Ex. D. 72; 47 L. J. Ex. 121; 37 L. T. 567; 26 W. R. 201.

original covenantee notwithstanding they were not in existence when the covenant was made (*f*).

See ANNUITIES AND RENTCHARGES—RESTRICTIONS AS TO USER OF LAND—SETTLEMENTS.

Requisitions.

1. *The last receipts for the rent payable under the leases and the premiums under the policies of insurance against fire in accordance with the covenants must be produced as well as the last receipts for rates, taxes, and other outgoings.*

2. *Has any notice of want of repair under the covenants in the leases been received by the vendor?*

3. *The proposed mortgagee must be satisfied that the covenants contained in the indenture of , 19 , as to the elevation and building line of the house which has just been completed, have been complied with.*

4. *The restrictive covenants contained in the indenture of , 19 , were not referred to in the particulars: Unless the vendor can prove that the character and condition of the adjoining lands has undergone such a change as is referred to in* The Duke of Bedford *v.* The Trustees of the British Museum, *the purchaser will refuse to complete the contract.*

5. *The landlord's consent in writing to the proposed assignment in accordance with the covenant contained in the lease must be produced.*

6. *Has the covenant contained in the lease to the vendor to make a footpath in front of the premises been complied with? The purchaser must be satisfied on this point.*

7. *The lease of , 19 , contains a covenant that the house shall be used as a private dwelling-house only: It is, however, understood that no objection to the carrying on of a profession in the H. Street houses is made. It is intended to use the house for this pur-*

(*f*) *Forster* v. *Elvet Colliery Co., Ltd.*, [1908] 1 K. B. 629; 77 L. J. K. B. 521; 98 L. T. 736.

pose, and an assurance in writing must be obtained from the lessor that the covenant is not intended to extend to the practice of a profession.

CURTESY.

Curtesy is the right which, on the death of a wife, the husband has to an estate for life in the freehold property of which the wife was, at her death, entitled for an estate in fee simple, or in fee tail in possession at law, or in equity. It arises only where the property in question is not conveyed during the wife's lifetime, and where the husband survives, having had issue of the wife born alive capable of inheriting the estate as her heir. The husband's estate by curtesy attaches to property settled on a woman for her separate use, or to which she is entitled as separate property under the Married Women's Property Act, 1882, only if the wife dies intestate as to such property (*g*).

The husband has a right to curtesy out of his wife's property saved from lapse by the 33rd section of the Bills Act, 1837 (*h*).

There is no curtesy in respect of lands held in joint tenancy.

The husband's right to curtesy out of the wife's copyhold lands depends upon the custom of the manor of which such lands form part. The curtesy (if the custom exists) of husbands married before the enfranchisement of lands enfranchised under the Copyhold Acts is not lost by such enfranchisement (*i*). On a purchase of copyhold property enfranchised under these Acts since the marriage of a female owner, inquiry should be made as to what customs with regard to curtesy exist in the manor of which such property forms or formed part.

(*g*) *Hope* v. *Hope*, [1892] 2 Ch. 336; 61 L. J. Ch. 441; 66 L. T. 522; 40 W. R. 522.

(*h*) *Eager* v. *Furnivall*, 17 Ch. D. 115; 50 L. J. Ch. 537; 44 L. T. 464; 29 W. R. 649.

(*i*) 4 & 5 Vict. c. 35, s. 79; 15 & 16 Vict. c. 51, s. 34; 57 & 58 Vict. c. 46, s. 21 (1) (c).

Curtesy extends only to one-half of land subject to the custom of gavelkind, and continues only while the husband remains a widower, and it is not contingent on issue being born.

A tenant by the curtesy in possession has the powers of a tenant for life under the Settled Land Acts (*k*), and his estate is deemed to arise under a settlement made by his wife (*l*).

Requisitions.

1. *Did Mrs. A. B. at any time have issue by her husband born alive and capable of inheriting the premises contracted to be sold? If so, either the death of her husband G. B. must be proved, or, if he is still alive, he must join for the purpose of releasing his estate by the curtesy.*

2. *As A. B. is selling under the Settled Land Act in respect of his estate by the curtesy, proof must be given in the usual manner of his marriage, the death of Mrs. B., and the birth of issue capable of inheriting.*

CUSTOMS.

See COPYHOLDS.

DATE.

A title may, and often does, depend upon the exact date of a deed, and care should be taken to see that all dates are accurately stated in the abstract.

When two deeds are executed on the same day, the Court will inquire which was, in fact, executed first; but if there is anything in the deeds themselves to show an intention either that they shall take effect *pari passu*, or even that

(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1) (viii.).
(*l*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 8.

the later deed shall take effect in priority to the earlier, the Court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties (*m*).

Requisitions.

1. *The date of the settlement abstracted on page of the abstract of title, is there given as* [1*st September*, 1919], *whereas in the recital to it in the indenture abstracted on page it is given as* [21*st September*]. *Which of these dates is correct?*

2. *The date of the indenture of th March*, 1922 (*abstract, page*), *is blank in the original. A statutory declaration must be made proving the date of execution.*

DEATH.

See Births, Marriages and Deaths.

DEATH OF VENDORS AND PURCHASERS.

See Vendors and Purchasers, Bankruptcy or Death of, before Completion.

DEATH DUTIES.

(i) Succession Duty.

This duty, which was first imposed by the Succession Duty Act, 1853 (*n*), is payable (with certain exceptions noticed below) upon any succession to real or personal property occurring upon the death of any person on or after

(*m*) *Gartside* v. *Silkstone and Dodsworth Coal and Iron Co.*, 21 Ch. D. 762; 51 L. J. Ch. 828; 47 L. T. 76; 31 W. R. 36.
(*n*) 16 & 17 Vict. c. 51.

the 19th May, 1853. It is a first charge on the interest of the successor and of all persons claiming in his right on all real and leasehold property in respect of which such duty is assessed (*o*). The effect of this is to render the interest, even of a *bonâ fide* purchaser for value of any estate, liable for such succession duties as are payable in respect of the property purchased and have not been paid at the time of the purchase. It is therefore of the greatest importance that proof should be obtained of the payment of such duties.

Where a testator has died since the 1st July, 1888, succession duty is payable in respect of legacies which he has charged on, or directed to be paid out of moneys to arise from the sale or mortgage of, his real estate (*p*).

The definition of a succession contained in the Act (*q*) is a very wide one. Under it every disposition of property, whether before or after the Act, by reason whereof any person has or shall become entitled to any property, or the income thereof, upon the death of any person either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person to any other person in possession or expectancy, is deemed to have conferred on the person entitled by reason of any such disposition or devolution a "succession."

The terms "predecessor" and "successor" respectively are the terms used in the Act to distinguish the person from whom the interest is derived and the person who subsequently becomes entitled to it.

In the case of the death of one of several joint-tenants, the deceased joint-tenant is deemed to be a "predecessor," and each joint-tenant taking by survivorship is deemed to be a successor (*r*).

A person becoming entitled to a general power of appointment was, in the event of his making any appointment thereunder, deemed to be entitled, at the time of exercising

(*o*) 16 & 17 Vict. c. 51, ss. 1, 42.
(*p*) Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8).
(*q*) 16 & 17 Vict. c. 51.
(*r*) *Ibid.* s. 3.

such power, to the property thereby appointed as a succession derived from the donor of the power (*s*), but in the case of successions arising on death on or after the 2nd August, 1894, a person entitled to a general power over property is liable to duty, whether he exercises the power or not (*t*); and where any person has a limited power of appointment under a disposition taking effect upon any death, any person taking any property by the exercise of such power is deemed to take it as a succession derived from the person creating the power as predecessor (*s*).

The extinction of charges determinable upon the death of any person is deemed to confer a succession accruing to the person or persons beneficially entitled to the property subject to such determinable charges (*u*). So also the extinction of any benefit determinable on the death of any person who has made any disposition of property, not being a *bonâ fide* sale whereby any such benefit was reserved to the grantor, is deemed to confer a succession equal in annual value to the yearly value of such benefit (*x*).

Fraudulent dispositions made to evade duty are deemed to confer successions, the person making such disposition being deemed to be the predecessor (*y*).

Succession duty is not payable until the successor becomes entitled in possession to his succession, or, in the case of outstanding determinable interests, until the determination thereof (*z*); but the Commissioners have power, upon the application of any person entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid (*a*).

The Act provides that no *bonâ fide* purchaser for value under a title not appearing to confer a succession shall be subject to any duty by reason of any intrinsic circumstance of which he shall not have had notice at the time of the

(*s*) 16 & 17 Vict. c. 51, s. 4.
(*t*) Finance Act, 1894, ss. 18, 22 (2a).
(*u*) 16 & 17 Vict. c. 51, s. 5.
(*x*) *Ibid.* s. 7.
(*y*) *Ibid.* s. 8.
(*z*) *Ibid.* s. 20.
(*a*) *Ibid.* s. 41.

purchase, and every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession, or any part thereof, exonerates a *bonâ fide* purchaser for value, notwithstanding any suppression or misstatement in the account upon the footing whereof the same was assessed, or any insufficiency of such assessment (*b*).

The Customs and Inland Revenue Act, 1889 (*c*), provides that real and leasehold property shall not, as against a purchaser for value, remain charged with any sum for succession duty after the expiration of twelve years from the happening of the event which gave rise to an immediate claim to such duty (*d*). In perusing an abstract, the conveyancer should consider whether any event disclosed within twelve years gives rise to an immediate claim to succession duty. Events most likely to give rise to such claims are deaths, and the exercise of special powers of appointment.

In addition to claims arising upon events which happen during the twelve years immediately preceding, it is necessary to bear in mind that there may be inchoate claims to duty not yet payable. For instance, if in the year 1920 a tenant for life and a remainderman conveyed to a purchaser, and if, when the title is afterwards investigated, the tenant for life is still alive, the estate may be liable to duty in the future upon the death of the tenant for life, and in such case the purchaser should insist upon the duty being commuted before completion. But the effect of a sale under a power of sale is to shift the duty to the purchase-money (*e*).

The following are the principal events of the nature of successions in respect of which no duty is payable :—

(1) Where a succession has occurred upon the death of a person before the 19th May, 1853 (*f*).

(2) In respect of an interest surrendered or extinguished before the 19th May, 1853 (*g*).

(*b*) 16 & 17 Vict. c. 51, s. 52.
(*c*) 52 & 53 Vict. c. 7.
(*d*) *Ibid.* s. 12.
(*e*) 16 & 17 Vict. c. 51, s. 42; *Re Warner's Settled Estates*, 17 C. D. 711; 50 L. J. Ch. 542; 45 L. T. 37; 29 W. R. 726.
(*f*) 16 & 17 Vict. c. 51, ss. 2, 54.
(*g*) *Ibid.* s. 18.

(3) Whenever legacy duty has been paid in respect of the property in question (*h*) (as to which see p. 126).

(4) On a succession from husband to wife or from wife to husband before the 30th April, 1909 (*i*).

(5) Where the successor is the lineal issue or lineal ancestor of the predecessor in respect of any succession to property on which probate duty or account duty shall have been paid (*k*) on a succession before the 30th April, 1909.

(6) Where the successor is the lineal issue or lineal ancestor of the predecessor in respect of any succession chargeable with estate duty (*l*), on a succession before the 30th April, 1909.

(7) Where the successor is the lineal issue or lineal ancestor of the deceased, and the property is settled and estate duty has been paid in respect of it since the date of the settlement (*m*), on a succession before the 30th April, 1909.

(8) Where the successor is the husband, wife, lineal issue or lineal ancestor of the predecessor and the estate does not exceed 15,000*l.* (*n*).

(9) Where the successor is the husband, lineal issue or lineal ancestor of the predecessor and the succession does not exceed 1,000*l.* (*n*).

(10) Where the successor is the widow or child under the age of twenty-one years of the predecessor and the succession does not exceed 2,000*l.* (*n*).

(11) Where the net value of the property, in respect of which estate duty is payable on the death of the predecessor, exclusive of property, settled otherwise than by the will of the predecessor, does not exceed 1,000*l.*, and where estate duty has been paid in respect of that estate, succession duty is

(*h*) 16 & 17 Vict. c. 51, s. 18; *Howe* (*Earl*) v. *Lichfield* (*Earl*), L. R. 2 Ch. 155; 36 L. J. Ch. 313; 16 L. T. 436; 15 W. R. 323.
(*i*) Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 58.
(*k*) 44 & 45 Vict. c. 12, s. 41.
(*l*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1, Sched. 1.
(*m*) *Ibid.* ss. 5 (2), 22 (2) (a); 61 & 62 Vict. c. 10, s. 13.
(*n*) Finance (1909-10) Act, 1910, s. 58.

not payable under the will or intestacy of the predecessor (*o*).

(12) Where the whole succession or successions derived from the same predecessor, and passing upon any death, do not amount in value to 100*l*. (*p*).

(13) No succession duty is payable on an advowson or next presentation unless the same is sold (*q*).

In cases not within the above exceptions, a purchaser must insist upon the production of the receipt of the Inland Revenue Office, or the certificate of the Commissioners showing payment in every case of a succession within twelve years. The certificate can at any time within the twelve years be obtained by any person interested without expense. As legacy duty and succession duty are not both payable in respect of the same succession, a purchaser may be satisfied with proof that legacy duty has been paid (*r*).

In the case of a sale of settled property under an overriding power, or under the powers conferred by the Settled Estates Act, 1877, or the Settled Land Act, 1882, the liability to succession duty arising in respect of deaths occurring subsequently to the sale is transferred to the purchase-money (*s*).

As between vendor and purchaser of a reversion under an open contract, the purchaser must bear the payment of the succession duty when the reversion is converted into an estate in possession (*t*); but where what the purchaser buys is an estate in possession, notwithstanding that he buys it in part from owners in remainder, he is entitled to have the estate cleared from the burden of the succession duty which will become payable on the determination of the prior estates (*u*).

(*o*) Finance Act, 1894, s. 16.
(*p*) 16 & 17 Vict. c. 51, s. 18.
(*q*) *Ibid.* s. 24.
(*r*) *Howe (Earl)* v. *Lichfield (Earl)*, L. R. 2 Ch. 155; 36 L. J. Ch. 313; 16 L. T. 436; 15 W. R. 323.
(*s*) 16 & 17 Vict. c. 51, s. 42; *Dugdale* v. *Meadows*, L. R. 6 Ch. 501; 40 L. J. Ch. 140; 24 L. T. 113.
(*t*) *Re Repington, Wodehouse* v. *Scobell*, [1904] 1 Ch. 811; 73 L. J. Ch. 533; 90 L. T. 663; 52 W. R. 522.
(*u*) *Re Kidd and Gibbons's Contract*, [1893] 1 Ch. 695; 62 L. J. Ch. 436; 68 L. T. 647; 41 W. R. 507; 3 R. 268.

(ii) Estate Duty.

All property, real or personal, settled or not settled, which passes on the death of every person dying on or after the 2nd August, 1894, is liable to a duty called "estate duty" (*x*). Property passing on death is deemed to include—

(1) Property of which the deceased was at the time of his death competent to dispose, or of which he would have been competent to dispose had he at that time been *sui juris* (*y*). This includes property over which the deceased had a general power of appointment, whether such power was exercisable by instrument *inter vivos*, or by will, or both, and also property of which he was tenant in tail, whether in possession or not, but does not include property over which he had only special power of appointment unless such special power was created by the deceased himself, nor does it include property over which the deceased had only a mortgagee's power of sale, or property of which he could dispose as tenant for life under the Settled Land Act, 1882 (*z*).

(2) Property in which the deceased or any other person had an interest ceasing on his death to the extent to which a benefit accrues or arises by the cesser of such interest, but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office or recipient of the benefits of a charity or as a corporation sole (*a*).

(3) Property taken as a *donatio mortis causâ*, or taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* which has not been made *bonâ fide* three years (or in the case of dispositions before the 30th April,

(*x*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 1.
(*y*) *Ibid.* s. 2 (1) (a).
(*z*) *Ibid.* s. 22 (2) (a).
(*a*) *Ibid.* s. 2 (1) (b).

1908, one year) before the death of the deceased, and property taken under any gift, whenever made, of which *bonâ fide* possession and enjoyment has not been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or any benefit to him by contract or otherwise (*b*).

(4) Property which the deceased has, either by himself alone, or in concert or by arrangement with any other person, caused to be vested in himself and any other person jointly, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person (*c*).

(5) Property passing under any settlement made by any deed or other instrument not taking effect as a will, whereby an interest in such property for life, or any other period determinable by reference to death, is reserved to the settlor, or whereby the settlor reserved to himself a power of revocation (*d*).

(6) Money received under a policy of assurance when the policy has been kept up by the deceased for the benefit of a donee (*e*).

(7) Any interest purchased or provided by the deceased, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased (*f*).

Property passing on death is not deemed to include property held by the deceased as trustee for another person, except where he is trustee under a disposition made by

(*b*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (a); 52 & 53 Vict. c. 7, s. 11 (1); 10 Edw. 7, c. 8, s. 59.
(*c*) 57 & 58 Vict. c. 30, s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (b); 52 & 53 Vict. c. 7, s. 11 (1).
(*d*) 57 & 58 Vict. c. 30, s. 2 (1) (c); 44 & 45 Vict. c. 12, s. 38 (2) (c); 52 & 53 Vict. c. 7, s. 11 (1).
(*e*) *Ibid.*
(*f*) 57 & 58 Vict. c. 30, s. 2 (1) (a).

himself within three years of his death, or where possession or enjoyment has not been *bonâ fide* assumed by the beneficiary immediately on the creation of trust and thenceforward retained to the entire exclusion of the deceased, or any benefit to him by contract or otherwise (*g*).

There are certain cases of exemption from estate duty. Those affecting the subject of investigation of title are—

(1) Property passing on the death of the deceased by reason of a *bonâ fide* purchase from the person under whose disposition the property passes (*h*).

(2) The falling into possession of any lease for lives granted for full consideration in money or money's worth (*h*).

(3) The determination of an annuity for lives granted for full consideration in money or money's worth (*h*).

(4) No estate duty is payable on an advowson or right of next presentation unless such advowson or right of next presentation is sold (*i*).

(5) Where the net value of the estate does not exceed 100*l*. (*k*).

(6) Where an interest in expectancy has, before the 2nd August, 1894, been sold or mortgaged, the purchaser or mortgagee takes free from estate duty (*l*).

(7) Where husband or wife is entitled either solely or jointly with the other to the income of any property settled by the other under a disposition which has taken effect before the 2nd August, 1894, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty is not payable in respect of such property until the death of the survivor (*m*).

(8) Where, on or after the 1st July, 1896, the interest of the settlor of settled property is enlarged by the death of any person entitled in remainder, or where

(*g*) 57 & 58 Vict. c. 30, s. 2 (3).
(*h*) *Ibid.* s. 3 (1).
(*i*) *Ibid.* s. 15 (4); 16 & 17 Vict. c. 51, s. 24.
(*k*) 57 & 58 Vict. c. 30, s. 17.
(*l*) *Ibid.* s. 21 (3).
(*m*) *Ibid.* s. 21 (5).

settled property reverts on the death of a tenant for life to the original settlor, the property is not deemed to pass on such death so as to be liable to estate duty (*n*).

(9) Where estate duty had already been paid in respect of settled property since the date of the settlement, estate duty was not payable in respect of it until the death of a person who was competent to dispose of the property (*o*) and who, if subsequent limitations continue to subsist on his death, was also *sui juris* (*p*), but this relief has been abolished in the case of deaths after the 15th August, 1914, except in the case where the only deaths are those of a husband and wife (*q*).

(10) Where, in the case of settled property, the interest of any person under the settlement fails before it becomes an interest in possession, and subsequent limitations continue to subsist, the property is not deemed to pass on his death (*r*).

(11) Where the deceased has purchased an annuity for the life of himself and of some other person, and the survivor of them, or to arise on his own death in favour of some other person, and such annuity does not exceed 25*l*., estate duty is not payable in respect of that annuity, or if there is more than one such annuity, in respect of the first annuity granted (*s*).

It will be observed that under the Finance Act there must be an actual passing of property on the death in order to make duty become payable, whereas under the Succession Duty Act duty may be payable even after a sale for value (*t*).

Settlement estate duty was imposed where property in

(*n*) Finance Act, 1896 (59 & 60 Vict. c. 28), ss. 14, 15.
(*o*) 57 & 58 Vict. c. 30, s. 5 (2). As to meaning of "competent to dispose," see *ibid.* s. 22 (2) (a), p. 120.
(*p*) Finance Act, 1898 (61 & 62 Vict. c. 10), s. 13.
(*q*) Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.
(*r*) 57 & 58 Vict. c. 30, s. 5 (3).
(*s*) *Ibid.* s. 15 (1).
(*t*) *Ante*, pp. 115, 117.

respect of which estate duty was leviable was settled by the will of a deceased, or, having been settled by some other disposition, passed on the death of the deceased to some person not competent to dispose of the property (*u*).

It was in operation in the case of deaths on or after the 2nd of August, 1894, and before or on the 11th May, 1914 (*x*).

The following were the principal cases of exemption from settlement estate duty :—

(1) Where the only life interest in the property after the death of the deceased was that of a wife or husband of the deceased (*y*).

(2) Where it had already been paid once during the continuance of the settlement (*z*).

(3) Where the net value of the property did not exceed 1,000*l*., and estate duty had been paid (*a*).

(4) In respect of property settled by a disposition which had taken effect before the 2nd August, 1894 (*b*).

(5) As settlement estate duty was only payable in respect of property upon which estate duty was leviable, the cases of exemption from estate duty were also cases of exemption from settlement estate duty (*c*).

A rateable part of the estate duty on an estate in proportion to the value of any property which, prior to the Land Transfer Act, 1897 (*d*), did not pass to the executor as such, is made a first charge on the property in respect of which duty is leviable (*e*); therefore such part of the duty as is payable in respect of real estate is a charge which a purchaser is concerned to see paid. There is, however, no provision in the Act charging with the payment of its rateable part of the estate duty any property which, prior to the Land Transfer Act, 1897 (*d*), passed to the executor as

(*u*) 57 & 58 Vict. c. 30, s. 5 (1). As to meaning of "competent to dispose," see *ibid.* s. 22 (2) (a), p. 120.
(*x*) Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.
(*y*) 57 & 58 Vict. c. 30, s. 5 (1) (a) (b).
(*z*) *Ibid.* s. 5 (1) (b).
(*a*) *Ibid.* s. 16 (3).
(*b*) *Ibid.* s. 21 (4).
(*c*) *Ibid.* s. 5 (1).
(*d*) 60 & 61 Vict. c. 65.
(*e*) 57 & 58 Vict. c. 30, s. 9 (1); 60 & 61 Vict. c. 65, s. 5.

such, and the estate duty on such property is (as was probate duty, which it replaced) payable out of the residuary estate (*f*); but settlement estate duty being imposed, not on the general estate of the deceased but on specific portions of it, was borne by the persons who took such portions (*g*). In cases, therefore, where leasehold estates are being dealt with, there is no necessity for a purchaser to make inquiries as to the payment of these duties.

Settlement estate duty was payable out of the settled legacy or property in respect of which the settlement estate duty was leviable (*h*); but it is conceived that this provision does not cast any obligation upon the purchaser to see that settlement estate duty has been paid.

The twelve years' limit applies to estate duty as well as to succession duty, and *bonâ fide* purchasers for value without notice are protected (*i*).

In cases where, in consequence of the merger of a life interest in the reversion expectant thereon, no property actually passes on the death of the owner of the life interest, estate duty is not payable. And where a tenant for life appointed to her son subject to her life interest, and subsequently surrendered her life interest to him, it was held that, upon the death of the tenant for life, estate duty was not payable in respect of the property appointed to the son (*k*). And even when the tenant for life, who had released his life interest in favour of the remainderman, died within twelve months of the release, no estate duty was payable in respect of the property (*l*), in the case of persons dying on or before the 31st March, 1900.

In cases where a tenant for life surrenders to a remainderman and dies within a year after the surrender, if the

(*f*) *Re Culverhouse, Cook* v. *Culverhouse*, [1896] 2 Ch. 251; 65 L. J. Ch. 484; 74 L. T. 347; 45 W. R. 10.

(*g*) *Re Maryon-Wilson, Wilson* v. *Maryon-Wilson*, [1900] 1 Ch. 565; 69 L. J. Ch. 310; 82 L. T. 171; 48 W. R. 338.

(*h*) 59 & 60 Vict. c. 28, s. 19; *Re Maryon-Wilson*, [1900] 1 Ch. 565; 69 L. J. Ch. 310; 82 L. T. 171; 48 W. R. 338.

(*i*) 57 & 58 Vict. c. 30, s. 8 (2) (18).

(*k*) *Att.-Gen.* v. *Beech*, [1899] A. C. 53; 68 L. J. Q. B. 130; 79 L. T. 565; 47 W. R. 257; 63 J. P. 116.

(*l*) *Att.-Gen.* v. *De Préville*, [1900] 1 Q. B. 223; 69 L. J. Q. B. 283, 81 L. T. 690; 48 W. R. 193.

surrender took place after the 31st March, 1899, and before 30th April, 1908, or within three years after the surrender if the surrender took place on or after the 30th April, 1908, the property is deemed to pass on the death of the tenant for life and pays estate duty accordingly (*m*).

A *bonâ fide* mortgage or sale by the tenant for life and the remainderman to a third person does not render the property in the hands of the mortgagee or purchaser liable to estate duty on the death of the tenant for life (*n*), so that estate duty (unlike succession duty) does not require commutation on such an occasion.

The payment of estate duty is proved by the receipt of the Inland Revenue office or by the certificate of the Commissioners (*o*).

(iii) Legacy Duty.

This duty is payable not only in respect of every legacy specific or pecuniary given by will, but also in respect of the clear residue of the personal estate other than leaseholds, either of a testator or intestate (*p*). Where the testator died before 1st July, 1888, legacies to be paid out of money to arise by sale or mortgage of real estate were liable to it (*q*), but in respect of persons dying on or after the 1st July, 1888, this is no longer so, but succession duty is payable instead (*r*).

It is important, in dealing with a reversionary interest under a will, to ascertain whether legacy duty has been paid. Where personal property is given in succession to persons who are chargeable with duty at one and the same rate, legacy duty is at once payable out of the corpus so given; but where the beneficiaries do not pay the same rate of duty, legacy duty is not immediately charged on the corpus, but is charged upon the beneficial interest of each

(*m*) Finance Act, 1900 (63 Vict. c. 7), s. 11.
(*n*) *Cowley* v. *Inland Revenue Commissioners*, [1899] A. C. 198; 68 L. J. Q. B. 435; 80 L. T. 361; 47 W. R. 525.
(*o*) 57 & 58 Vict. c. 30, s. 11 (1).
(*p*) The Stamp Act, 1815 (55 Geo. 3, c. 184), Schedule.
(*q*) The Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 12.
(*r*) 51 Vict. c. 8, s. 21 (2).

legatee when his interest falls into possession, and the persons entitled to a temporary interest pay the legacy duty by four equal annual instalments (*q*).

The payment of legacy duty is proved by a copy of the entry in the books of the Commissioners of the payment of the duty (*r*), by production of the Commissioners' receipt (*s*), by production of a receipt for the legacy, or, in the case of an annuity, a receipt for the first four annual payments stamped with the amount of duty payable (*t*).

(iv) Probate and Account Duties.

These duties, which were payable in the case of deaths prior to the 2nd August, 1894, have been superseded by estate duty. They are not now of practical importance for the purpose of investigation of title.

Requisitions.

1. *The receipts for the succession duties payable on the deaths of Miss A. and Mrs. B. must be produced.*

2. *The additional duty payable on the increased value of the property on the determination of the ninety-nine years' lease must be borne by the vendor. This duty must be commuted or otherwise provided for* (*u*).

3. *The succession duty which will become payable on the death of the annuitant must be commuted or otherwise provided for.*

4. *The death of Mrs. C. must be proved, and the receipts for the succession duty payable on her death must be produced.*

5. *A. B. appears to have died within three years of the date of the voluntary conveyance to his wife. Estate duty therefore became payable on his death. The receipt for this duty must be produced.*

(*r*) The Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 12.
(*s*) *Ibid.* s. 35.
(*t*) *Ibid.* s. 27.
(*u*) *Re Kidd and Gibbons' Contract*, [1893] 1 Ch. 695; 62 L. J. Ch. 436; 68 L. T. 647; 41 W. R. 507; 3 R. 268.

6. *Have the duties which became payable under the Finance Act*, 1894, *on the death of X. Y. been paid? A certificate of discharge of the Commissioners, or the receipts of the Inland Revenue office, must be produced.*

DEBENTURES.

Debentures may be taken to include almost any instruments (other than mortgages in usual form, and acceptances) providing for the payment by a company of money at a future date. They usually, but not necessarily, have conditions indorsed subject to which they are issued, and which frequently effect a charge on the property of the company, either directly or by reference to a trust deed.

Debentures are sometimes issued as fixed charges, and sometimes as a floating security, and sometimes as a fixed charge on realty, and as a floating security as to other assets. A floating security is an equitable charge on the assets for the time being of the company as a going concern attaching to the subject charged in the varying condition in which it happens to be from time to time; until the debenture holders intervene, or a receiver is appointed, or a winding-up order is made, or resolution for winding-up passed, the company can deal with the property charged by such a security in any of the ways necessary for carrying on its business in the ordinary course (*x*).

If there is no agreement to suspend the right of the persons in whose favour a floating charge is given, they may intervene at any time. The right to intervene is, however, usually, by the conditions indorsed on the debenture, limited by agreement to the occurrence of specified events.

Where a company issued debentures by which it undertook to pay the principal at a distant day, and interest on fixed days half-yearly, and charged by way of floating

(*x*) *Wheatley* v. *Silkstone and Haigh Moor Coal Co.*, 29 Ch. D. 715; 54 L. J. Ch. 778; 52 L. T. 798; 33 W. R. 797.

security all its property present and future, and a condition indorsed on the debentures provided that, notwithstanding the charge, the company might, in the course and for the purpose of its business, sell or otherwise deal with its property until default should be made in payment of interest for three months after the same should have become due, or until an order or resolution for winding-up, and the company after an instalment of interest had been due more than three months, but before the debenture holders had taken any step to enforce their security, by an issue of bonds mortgaged specific assets, it was held by the House of Lords upon the construction of the condition that after the expiration of the three months the debentures remained a floating security until the holders took some step to enforce them and prevent the company from dealing with its property, and that the debenture holders were not entitled to an injunction restraining the company from paying interest to the bondholders (*y*).

A contract for the sale of debentures which are a security, even though a floating one only, on assets which include real or leasehold property, is a contract for sale of an interest in lands within section 4 of the Statute of Frauds (*z*).

Every company has not power to borrow money or to mortgage, but express power is not required to enable a company to do so, and power is readily implied; thus, all trading companies have an implied power to borrow money for the purposes of their business (*a*).

Debentures are exempt from the operation of the Bills of Sale Acts (*b*), even in the case of companies registered in Guernsey (*c*).

(*y*) *Governments Stock and other Securities Investment Co., Ltd.* v. *Manila Rail. Co., Ltd.*, [1897] A. C. 81; 66 L. J. Ch. 102; 75 L. T. 553; 45 W. R. 353.

(*z*) *Driver* v. *Broad*, [1893] 1 Q. B. 744; 63 L. J. Q. B. 12; 69 L. T. 169; 41 W. R. 483; 4 R. 411.

(*a*) *General Auction, Estate, and Monetary Co.* v. *Smith*, [1891] 3 Ch. 432; 60 L. J. Ch. 723; 65 L. T. 188; 40 W. R. 106.

(*b*) Bills of Sale Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 17.

(*c*) *Clark* v. *Balm Hill Co.*, [1908] 1 K. B. 667; 77 L. J. K. B. 369; 15 Manson 42.

Certain mortgages and charges created by a company require registration at the Joint Stock Registry, otherwise they are void against creditors (*d*). They are :—

(a) Those for securing any issue of debentures.
(b) Those charging uncalled capital.
(c) Those which if executed by an individual would require registration as bills of sale.
(d) Those charging land.
(e) Those charging book debts of the company.
(f) Those giving a floating charge on the undertaking or property of the company.

When a title is offered dependent upon a mortgage given by a company, the following questions should be considered :—(1) Has the company power to borrow, either expressed or implied by its being a trading company or otherwise? (2) Is the power general or limited to any particular purpose or amount? (3) Has the company power to mortgage the property in question? (4) Does the mortgage require registration? (5) If the company has issued debentures, do they constitute a legal charge on the property, and, if a floating charge, has any event happened to cause such floating charge to become effective?

Requisitions.

1. *A copy of the debentures issued by the A. B. Company, Limited, must be supplied, and the trust deed, if any, referred to therein must be abstracted.*

2. *Has any default been made or event happened which, under the conditions indorsed on the debentures or under the trust deed, gives the debenture holders or their trustees the right to intervene?*

DEBTS.

See CHARGES BY WILL.

(*d*) Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 93.

DECLARATIONS.

See VESTING DECLARATIONS AND ORDERS.

DEEDS.

Attestation of a deed is not usually necessary, but a deed executed before the 13th August, 1859, under a power must comply with the terms of that power regarding attestation. If executed on or since that date, attestation by two witnesses is sufficient (*e*).

In the case of marksmen, the deed usually contains a signed attestation clause showing that the mark was duly made by the party whose signature it represents, and that the deed was read over and explained to him, but there does not appear to be any authority to the effect that attestation is necessary even in this case.

The sealing and delivery of a deed are essential to its validity. Signing was not necessary prior to the Statute of Frauds, and it is a moot point whether it is now necessary even when the subject-matter is within that Statute (*f*). On the one hand, Blackstone expresses an opinion that it is (*g*), while according to other authorities, such as Preston (*h*), it is not, and the decision in *Cooch* v. *Goodman* (*i*), if anything, adds to the doubt.

The alteration of a deed in a material particular after execution makes it void (*k*), but not so the filling in of the date or the names of occupiers of land conveyed, or similar additions consistent with the purpose of the deed, even if done by the party to whom it is delivered (*l*); and inasmuch

(*e*) 22 & 23 Vict. c. 35, s. 12.
(*f*) 29 Car. 2, c. 3, ss. 1, 4.
(*g*) Blackstone, 306.
(*h*) Shep. Touchstone, 56, n.
(*i*) 2 Q. B. 580; 2 G. & D. 159; 6 Jur. 779.
(*k*) *Sellin* v. *Price*, L. R. 2 Ex. 189; 36 L. J. Ex. 93; 16 L. T. 21; 15 W. R. 749.
(*l*) *Aldous* v. *Cornwall*, L. R. 3 Q. B. 573; 37 L. J. Q. B. 201; 16 W. R. 1045; 9 B. & S. 607; *Adsetts* v. *Hives*, 9 L. T. 110; 33 Beav. 52; 9 Jur. (N. S.) 1063; 2 N. R. 474; 11 W. R. 1092; *Re Howgate and Osborn's Contract*, [1902] 1 Ch. 451; 71 L. J. Ch. 279; 86 L. T. 180.

as a deed cannot be altered after it is executed without fraud or wrong, it will be presumed, until the contrary is shown, that alterations or interlineations were made before execution (*m*).

The fact that a deed has been made void by its alteration in a material particular does not have the effect of revesting the estate in the person by whom it was conveyed (*n*).

See APPOINTMENTS — CONSIDERATION — COVENANTS — ESTOPPEL—REGISTRATION OF DEEDS AND WILLS—STAMPS—TITLE DEEDS AND THEIR CUSTODY.

Requisition.

It appears, on examining the deeds with the abstract, that the indenture of , 19 , has been altered in a material part. What evidence does the vendor offer that such alteration was made prior to execution?

DEPOSIT OF TITLE DEEDS.

See EQUITABLE MORTGAGE.

DESCENT.

The descent of real estate of inheritance in cases of death on or after the 1st January, 1834, is governed by the following rules :—

As regards both estates in fee simple and fee tail—

(1) In every case descent is to be traced from the purchaser (defined to mean the person who last acquired the land otherwise than by descent or than by any escheat, partition, or enclosure, by the effect of which the land became part of or descendible in the same manner as the seignory or land in respect of which it was acquired) (*o*).

(*m*) *Doe* d. *Tatum* v. *Catomore*, 16 Q. B. 745.
(*n*) *Ward* (*Lord*) v. *Lumley*, 5 H. & N. 656; 29 L. J. Ex. 372.
(*o*) 3 & 4 Will. 4, c. 106, ss. 1, 2.

(2) The estate descends in the first place lineally to the issue of the purchaser *ad infinitum*.

(3) Males take before females of the same consanguinity to the purchaser.

(4) Of two or more males of the same consanguinity, the eldest inherits, but females of equal consanguinity take together as coparceners.

(5) Issue of the children of the purchaser represent (*i.e.*, take the place of) their ancestor *in infinitum*.

As regards estates in fee simple the following additional rules apply :—

(6) On failure of the issue of the purchaser the inheritance goes to his nearest lineal ancestor (*p*).

(7) Among lineal ancestors of the purchaser the paternal line is always preferred to the maternal (*q*).

(8) The issue of an ancestor *in infinitum* represents such ancestor, but relations of the whole blood and their issue are preferred to relations of the half-blood (*r*).

(9) On the failure of male paternal ancestors the mother of the more remote male paternal ancestor is preferred to the mother of the less remote male paternal ancestor, and the same rule applies to the mothers of male maternal ancestors.

(10) Where, in cases of death after the 13th August, 1859, there is a total failure of heirs of the purchaser, or where any land is descendible as if an ancestor had been the purchaser and there is a total failure of the heirs of such ancestor, the land descends as if the person last entitled had been the purchaser (*s*).

Where the real and personal estate of a man who dies intestate after the 1st September, 1890, leaving a widow but no issue, does not exceed 500*l.*, his widow takes such real and personal estate absolutely and exclusively (*t*); and where the net value of such real and personal estate exceeds

(*p*) 3 & 4 Will. 4, c. 106, s. 6
(*q*) *Ibid.* s. 7.
(*r*) *Ibid.* s. 9.
(*s*) 22 & 23 Vict. c. 35, ss. 19, 20.
(*t*) Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), s. 1.

500*l.*, the widow of such intestate is entitled to a charge on 500*l.*, part thereof, and interest at four per cent. from the death of the intestate (*u*).

See BOROUGH ENGLISH — COPARCENERS — COPYHOLDS — CURTESY — DOWER AND FREEBENCH — ENTAIL — ESCHEAT — GAVELKIND — INTESTATES' ESTATES ACT, 1890, CHARGES UNDER—MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

Requisitions.

1. *A pedigree must be supplied showing that X. Y. was entitled as heir-at-law of A. B., and such pedigree must be verified in the usual manner.*

2. *Having regard to the rule of descent that* [*here state rule*] *it would appear that E. F. and not G. H. was entitled to succeed to Blackacre Farm as heir-at-law of X. Y. How does the vendor propose to overcome this objection?*

DEVISE.

See WILLS.

DISABILITIES.

See ALIENS—COMPANIES REGISTERED UNDER THE COMPANIES ACTS—CONVICTS, TRAITORS AND FELONS—INFANTS—INSANITY — LIMITATION, STATUTES OF — MARRIED WOMEN.

(*u*) Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), s. 2.

DISCLAIMER.

Primâ facie, every estate, whether given by will or otherwise, is supposed to be beneficial to the party to whom it is given, but the party to whom the gift is made may disclaim (*y*). In the absence of evidence of disclaimer, the estate will vest in the donee (*z*).

An estate may be disclaimed by conduct without any express declaration (*a*). It is, however, usual to put a disclaimer on record by the execution of a deed.

A married woman may, on or after the 1st October, 1845, by deed acknowledged, disclaim any estate or interest in hereditaments of any tenure (*b*). It would seem that, in respect of property acquired beneficially after 1882 by a woman whenever married, or acquired by a woman married after that date, a married woman may disclaim by conduct or by deed unacknowledged, but with regard to trust property possibly a married woman must still disclaim by deed acknowledged (*c*).

A person to whom any power, whether coupled with an interest or not, is given, may, by deed executed after the 31st December, 1882, disclaim such power, and on such disclaimer the power may be exercised by the other or others, or the survivors or survivor of the other persons to whom the power is given, unless the contrary is expressed in the instrument creating the power (*d*).

The trustee of a bankrupt's estate may disclaim onerous property by writing signed by him within twelve months after his appointment, or if such property shall not have come to his knowledge within one month after his appointment, then within twelve months after he first became

(*y*) *Hurst* v. *Hurst*, 21 Ch. D. 278; 51 L. J. Ch. 729; 46 L. T. 899; 31 W. R. 327.

(*z*) *Re Arbib and Class's Contract*, [1891] 1 Ch. 601; 60 L. J. Ch. 263; 64 L. T. 217; 39 W. R. 305.

(*a*) *Re Birchall, Birchall* v. *Ashton*, 40 Ch. D. 436; 60 L. T. 369; 37 W. R. 387.

(*b*) 8 & 9 Vict. c. 106, s. 7.

(*c*) See, on the operation of the Married Women's Property Act with regard to trusts, *Re Harkness and Allsopp's Contract*, [1896] 2 Ch. 358; 65 L. J. Ch. 726; 74 L. T. 652; 44 W. R. 683.

(*d*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 6.

aware of it (*e*). Leave of the Court is required to enable a trustee to disclaim a lease except in the following two cases :—(1) where the bankrupt has not sublet, mortgaged or charged the property, and (a) the rent and value of the property leased is less than 20*l.* per annum, or (b) where the estate is administered under section 121 of the Bankruptcy Act, 1883, or section 129 of the Act of 1914, or (c) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days require the matter to be brought before the Court; (2) where the bankrupt has sublet, mortgaged or charged the demised premises, and the trustee serves the lessor and the sub-lessee or mortgagees with notice of his intention to disclaim, and none of them within fourteen days require the matter to be brought before the Court (*f*).

Requisitions.

1. *The disclaimer by A. B. of the trusts of the will of X. Y. must be proved by the production of a deed of disclaimer, or a statutory declaration must be made by some person conversant with the facts, proving that A. B. from the first disclaimed such trusts by his conduct, and has never acted therein.*

2. *The order of the Court in the bankruptcy of X. Y. giving his trustee liberty to disclaim the lease of the High Street property should be abstracted in chief, and if an office copy thereof is in the possession of the vendors or their solicitors it should be produced.*

DISENTAILING ASSURANCE.

See ENTAIL.

(*e*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55; Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 13; Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 54.

(*f*) Bankruptcy Rules, 1890, r. 69; Bankruptcy Rules, 1915, r. 276.

DISTRINGAS AND STOP ORDER.

Persons claiming to be interested under any document or instrument in writing, in any stocks, shares, or securities, or dividends thereon, standing in the books of the Bank of England or any other public company, whether incorporated or not, may, on filing an affidavit and notice in the Central Office, serve on such company a duplicate of the filed notice (*g*), which has the same force against the company as a writ of distringas under the Court of Chancery Act, 1841 (*h*), had against the Bank of England (*i*), that is to say, it entitles the person obtaining the order to a reasonable notice that unless he takes proceedings to assert his right the stock will be dealt with.

A stop order may be obtained on any moneys or securities in Court to the credit of an action, cause, or matter: the application may, in most cases, be made by summons (*k*). Where a fund is in Court, an incumbrancer on the interest of a beneficiary cannot effectually gain priority except by obtaining such an order (*l*). The order does not decide anything as to the rights of the parties (*m*).

Requisitions.

1. *The vendor must obtain from the trustees an authority for the purchaser to inquire whether the funds are free from restraint in the books of the several companies.*

2. *The mortgagor's solicitor must supply a certificate of the fund in Court in the action of A. v. B., showing that no stop order has been obtained thereon.*

(*g*) Ord. 46, r. 4, Form 27, R. S. C., Appendix B.
(*h*) 5 Vict. c. 5, s. 5.
(*i*) Ord. 46, r. 8.
(*k*) *Ibid.* rr. 12, 13.
(*l*) *Pinnock* v. *Bailey*, 23 Ch. D. 497; 52 L. J. Ch. 880; 48 L. T. 811; 31 W. R. 912; *Mack* v. *Postle*, [1894] 2 Ch. 449; 63 L. J. Ch. 593; 71 L. T. 153; 8 R. 339.
(*m*) *Hawkesley* v. *Gowan*, 11 L. T. 134; 12 W. R. 1100; *Lucas* v. *Peacock*, 9 Beav. 177.

DIVORCE.

The same consequences as to property follow a divorce as if the marriage contract had been annihilated and the marriage tie broken at its date (*n*); consequently, when the husband and wife are tenants by entireties, the effect of a decree absolute for dissolution of marriage is to make them joint tenants (*o*).

The rights to property under a settlement are not forfeited by the dissolution of a marriage (*p*), but on a divorce or judicial separation for adultery of the wife, if it appears that she is entitled to any property either in possession or reversion, the Court may order such settlement as it thinks reasonable to be made of such property or any part of it for the benefit of the innocent party and of the children of the marriage (*q*). And after a final decree of nullity of marriage or dissolution of marriage, the Court may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may order the whole or a portion of the property settled to be applied either for the benefit of such parties or of the children of the marriage (*r*).

The wife's right to dower is lost by dissolution of the marriage by the Court (*s*), as is also of course the husband's estate by the curtesy.

Requisition.

Was any order made for variation of the settlement of , 19 , consequent on the divorce of Mr. and

(*n*) *Wilkinson* v. *Gibson*, L. R. 4 Eq. 162; 36 L. J. Ch. 646; 16 L. T. 733; 15 W. R. 983.

(*o*) *Thornley* v. *Thornley*, [1893] 2 Ch. 229; 62 L. J. Ch. 370; 68 L. T. 199; 41 W. R. 541; 3 R. 311.

(*p*) *Fitzgerald* v. *Chapman*, 1 Ch. D. 563; 45 L. J. Ch. 23; 33 L. T. 587; 24 W. R. 130.

(*q*) Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 45.

(*r*) Matrimonial Causes Act, 1859 (22 & 23 Vict. c. 61), s. 5; Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 3.

(*s*) *Frampton* v. *Stephens*, 21 Ch. D. 164; 51 L. J. Ch. 562; 46 L. T. 617; 30 W. R. 726.

Mrs. A. B.? and, if so, did such order affect the life interest contracted to be sold? An office copy of the order must be produced if in the vendor's possession.

DOUBTFUL TITLE.

The Court will not compel a man to purchase a law suit by forcing him to take a title which is fairly open to question (*t*). Therefore, where a lease contained a covenant against assigning without consent, with the usual qualification as to refusal in the case of a respectable and responsible tenant, and the lessor refused, alleging a somewhat unreasonable objection, the Court on this ground refused to force the title upon a purchaser under an open contract (*u*), as also it did a title which depended upon a question whether or not the vendor when he purchased had notice of certain facts relating to a lease (*x*).

DOWER AND FREEBENCH.

A purchaser may safely assume that the widow of every man married on or before the 1st January, 1834, is now dead. Consequently the old law of dower has ceased to be of practical importance in investigating titles.

By the Dower Act, 1833 (*y*), no woman married after the 1st January, 1834, is entitled to dower out of lands which her husband has absolutely disposed of in his lifetime or by will; and when he has devised for her benefit any estate or interest in any lands out of which his widow would have been entitled to dower, she is not entitled to dower out of any of his lands unless a contrary intention is declared by

(*t*) *Rose* v. *Calland*, 5 Ves. jun. 186.
(*u*) *Re Marshall and Salt's Contract*, [1900] 2 Ch. 202; 69 L. J. Ch. 542; 83 L. T. 147; 48 W. R. 508.
(*x*) *Re Hardman and Wilcox's Contract*, [1902] 1 Ch. 599; 71 L. J. Ch. 263; 86 L. T. 246.
(*y*) 3 & 4 Will. 4, c. 105.

the will (*z*); and the wife's right may be wholly or partially destroyed by a declaration made by the husband by deed or will (*a*), and even a recital in a deed may operate as a sufficient declaration for this purpose (*b*); but the Act extends the right to dower, where it exists, to equitable estates in possession (*c*).

The rights of a woman married after the 1st January, 1834, would not, in the event of her husband dying intestate with respect to property conveyed to uses to bar dower, be affected by such uses (*d*).

Where a male owner has died intestate with respect to property contracted to be sold, it is necessary to inquire whether he left a widow, and, if it appears that he did, proof of her death should be required unless the right to dower was barred by a declaration in a deed or will.

There is no dower in respect of an estate *pur autre vie* (*e*), nor of property held jointly.

The right to dower ceases to exist on a divorce (*f*).

A doweress has two separate rights, a right to one-third of the rents and profits from the death of her husband, and the right to have her dower assigned to her, enjoying the former right will not prejudice the latter right (*g*).

A widow cannot claim more than six years' arrears of dower (*h*), and after twelve years from the last receipt of income or acknowledgment of her right she loses her title to dower (*i*).

With regard to freebench, this can only exist in manors in which there is a special custom giving a wife such an

(*z*) 3 & 4 Will. 4, c. 105, ss. 4, 9.
(*a*) *Ibid.* ss. 6, 7.
(*b*) *Re Gibbon, Moore* v. *Gibbon*, [1909] 1 Ch. 367; 78 L. J. Ch. 264; 100 L. T. 231.
(*c*) 3 & 4 Will. 4, c. 105, s. 2.
(*d*) *Ibid.*
(*e*) *Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375.
(*f*) Co. Litt. 32 a; *Frampton* v. *Stephens*, 21 Ch. D. 164; 51 L. J. Ch. 562; 46 L. T. 617; 30 W. R. 726.
(*g*) *Williams* v. *Thomas*, [1909] 1 Ch. 713; 78 L. J. Ch. 473; 100 L. T. 631.
(*h*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 41.
(*i*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.

interest in her husband's land. Inquiry should, therefore, be made, on a purchase of copyholds, whether any such custom exists, and what are the particulars and extent of it. As a rule freebench is defeated by the alienation of the land in the lifetime of the owner (*k*). The widow of a purchaser of copyholds who, in his lifetime, does not get admitted on the rolls as a legal owner, is not entitled to freebench (*l*). The freebench, if any, of persons married before the enfranchisement of lands which have been enfranchised under the provisions of the Copyhold Acts, is not lost by such enfranchisement (*m*).

See GAVELKIND—JOINTURE.

Requisitions.

1. *Was Mrs. A. B., deceased, married before the* 1*st January*, 1834? *If so, inasmuch as the property was not conveyed to uses to bar dower, the receipt for the succession duty which became payable in respect of the increased value of the succession on her decease must be produced.*

2. *Although X. Y. was married since* 1*st January*, 1834, *his wife, if still alive, must (having regard to the fact that he died intestate, and that there does not appear to be any declaration barring dower in the conveyance to him) join in the conveyance. If she is dead, proof of that fact must be given.*

3. *Does there exist any custom of the manor of B. by which the wife of a deceased copyholder is entitled to freebench? and, if so, does it apply to property conveyed by the husband in his lifetime, and what is the extent of such freebench?*

(*k*) *Lacey* v. *Hill*, L. R. 19 Eq. 346; 44 L. J. Ch. 215; 32 L. T. 48; 23 W. R. 285.

(*l*) *Smith* v. *Adams*, 18 Jur. 968; 24 L. J. Ch. 258; 23 L. T. (O. S.) 325; 2 W. R. 698; 5 De G. M. & G. 712; 18 Beav. 499; 2 Eq. Rep. 1001.

(*m*) 4 & 5 Vict. c. 35, s. 79; 15 & 16 Vict. c. 51, s. 34; 57 & 58 Vict. c. 46, s. 21.

DRAINAGE.

See LAND IMPROVEMENT ACTS—SETTLED LAND.

DUTIES.

See DEATH DUTIES.

EASEMENTS AND PROFITS À PRENDRE.

An easement is a right unconnected with its profits enjoyed over property, known as the servient tenement, by a person in respect of his interest in other premises, known as the dominant tenement; instances of such rights are rights of light and of way.

Profits *à prendre* are rights of taking profits out of a tenement, such as the right of cutting turf, of pasturage, and of sporting or fishing.

Land which is subject to any easement or profit *à prendre* remains so subject in the hands of a purchaser, whether with or without notice thereof; on the other hand, a purchaser is entitled to the benefit of all easements, rights and advantages appertaining to the property purchased, and rights which are merely reputed to appertain to or are enjoyed with the property also pass by conveyances made after the 31st December, 1881, unless such rights are expressly excluded (*n*); but the section of the Conveyancing Act which so provides does not operate to create easements over property to which the grantor is not beneficially as well as legally entitled (*o*); nor does it entitle a purchaser to any of the rights specified if he is not entitled to them according to the proper construction of the contract (*p*).

(*n*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6.
(*o*) *Beddington* v. *Atlee*, 35 Ch. D. 317; 56 L. J. Ch. 655; 56 L. T. 514; 35 W. R. 799; 51 J. P. 484.
(*p*) *Re Peck and London School Board*, [1893] 2 Ch. 315; 62 L. J. Ch. 598; 68 L. T. 847; 41 W. R. 388; 3 R. 511.

On a severance of tenements belonging to the same owner, on the principle that a person is not allowed to derogate from his own grant, a conveyance to the grantee of one of such tenements is a conveyance of those continuous and apparent easements which have, in fact, been enjoyed with the property conveyed, but which, prior to the grant, were not strictly easements owing to the dominant and servient tenements belonging to the same owner (*q*). Where on a severance an easement is absolutely necessary to the enjoyment of either part of the severed tenement, an easement of necessity will be impliedly granted to the grantee, or reserved to the grantor, as the necessity may require (*r*); but a reservation even of continuous and apparent easements will not readily be implied in favour of the grantor (*s*).

Any easement which the mere inspection of the property would disclose or suggest is a patent defect, and would not form any defence to an action to compel the purchaser to complete the contract; thus, though a right of way round and across a meadow was not disclosed, specific performance was decreed (*t*); but the existence of an easement of which no indication would be detected by such an inspection will in general be a good ground for resisting specific performance even though the sale purports to be subject to existing easements (*u*). A purchaser will not, however, even in the case of a latent easement, be relieved from his contract on that ground if he was at the time he entered into it aware of the existence of such easement, unless the contract expressly provided that he should have a good title (*x*).

(*q*) *Polden* v. *Bastard*, L. R. 1 Q. B. 156; 35 L. J. Ex. 92; 13 L. T. 441; 14 W. R. 198.

(*r*) *Pyer* v. *Carter*, 1 H. & N. 916; 28 L. T. (O. S.) 371; 26 L. J. Ex. 258; 5 W. R. 371; *Pinnington* v. *Galland*, 9 Ex. 1; 22 L. J. Ex. 349; 22 L. T. (O. S.) 41; 1 C. L. R. 819.

(*s*) *Wheeldon* v. *Burrows*, 12 Ch. D. 31; 48 L. J. Ch. 853; 41 L. T. 327; 48 W. R. 196; *Suffield* v. *Brown*, 33 L. J. Ch. 249; 9 L. T. 627; 12 W. R. 356; 10 Jur. (N. S.) 111; 3 N. R. 340; 4 De G. J. & S. 185.

(*t*) *Bowles* v. *Round*, 5 Ves. 508.

(*u*) *Heywood* v. *Mallalieu*, 25 Ch. D. 357; 53 L. J. Ch. 492; 49 L. T. 658; 32 W. R. 538.

(*x*) *Re Gloag and Miller's Contract*, 23 Ch. D. 320; 52 L. J. Ch. 654; 48 L. T. 629; 31 W. R. 601.

The right to an easement or profit *à prendre* may be acquired by prescription either (i.) at common law, or (ii.) under the Prescription Act, 1832 (*y*).

(i.) Prescription at Common Law.

If it be proved that the right has been enjoyed openly for twenty years, immemorial user may be presumed and a title acquired accordingly. Such presumption may, however, be rebutted by showing (1) that the exercise of the right actually commenced within legal memory, or (2) that from the nature of the user by the owner of the dominant tenement, or from the nature of the occupation, or from the incapacity of the owner of the servient tenement, the latter could not have resisted the user of the right, or (3) that the interest was enjoyed secretly and without the knowledge of the owner of the servient tenement, or (4) that the enjoyment was by the express licence of such owner.

Where uninterrupted enjoyment for twenty years or more is shown, but the presumption of immemorial user is rebutted by showing that the exercise of the right first commenced within legal memory, a grant made twenty or more years ago may be presumed (*z*). This presumption may be rebutted by showing (1) that from the nature of the user by the owner of the dominant tenement, or from the nature of the occupation by the owner of the servient tenement, the user of the right could not have been resisted by the latter, or (2) that the easement was enjoyed secretly and without the knowledge of the owner of the servient tenement, or (3) that the enjoyment was by express licence of the owner of the servient tenement, or (4) that at the time at which the grant would be presumed to have been made, the owner of the servient tenement was under disability and consequently incapable of making the grant.

The presumption of a lost grant applies only to an owner in fee simple, and it will not be presumed that a tenant for

(*y*) 2 & 3 Will. 4, c. 71.
(*z*) *Rex* v. *Joliffe*, 1 L. T. (O. S.) K. B. 232; 26 R. R. 264; 2 Barn. & Cress. 54; 3 Dowl. & Ry. 240.

years has made a grant to the owner of a dominant tenement for as long as his term of years lasts (*a*).

(ii.) Prescription under the Prescription Act, 1832.

Light.—When the use of light for any dwelling-house, workshop, or other building has, without interruption, been enjoyed for twenty years next before some suit or action in which it is brought into question, the right to it is deemed absolute and indefeasible, unless it appears that it was enjoyed by consent or agreement expressly made or given for that purpose by deed or writing (*b*). A greenhouse is a building within this section (*c*).

The question whether the right to the access of light to a building which has been enjoyed through one window is preserved upon an alteration of the building depends on the identity of the light and not on the identity of the aperture.

No alteration of a building which would not involve the loss of a right to light when indefeasible will prevent the acquisition of the right if made during the statutory period (*d*).

The period of twenty years commences from when the exterior walls of the building with the spaces for the windows are completed, and the building is properly roofed in, although the window sashes and the glass may not be put in, and the interior may not be finished until some time after (*e*); and no act is deemed an interruption unless it is submitted to or acquiesced in for a year after the party interrupted has notice of the interruption, and of the person authorizing the interruption to be made (*f*).

A curious consequence of the joint operation of sects. 3 and 4 of the Prescription Act is that, if the user of light has been enjoyed for nineteen years and a day, there is acquired

(*a*) *Wheaton* v. *Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.
(*b*) 2 & 3 Will. 4, c. 71, ss. 3, 4.
(*c*) *Clifford* v. *Holt*, [1899] 1 Ch. 698; 68 L. J. Ch. 332; 80 L. T. 48.
(*d*) *Andrews* v. *Waite*, [1907] 2 Ch. 500; 76 L. J. Ch. 876; 97 L. T. 428.
(*e*) *Collis* v. *Laugher*, [1894] 3 Ch. 659; 63 L. J. Ch. 851; 71 L. T. 226; 43 W. R. 202; 8 R. 760.
(*f*) 2 & 3 Will. 4, c. 71, s. 4.

an inchoate right which cannot be defeated if an action is brought immediately upon the expiration of the twenty years, as the interruption will not then have lasted for a year (*g*); but an injunction cannot be obtained until the twenty years have elapsed (*h*). Time under the statute does not run during unity of possession of the dominant and servient tenement (*i*); but unity of seisin for an estate in fee will not extinguish the easement, if there is no unity of possession and enjoyment (*k*).

Neither infancy, unsoundness of mind, nor any other disability prevents the right being acquired, and when once acquired, it binds all persons having an interest in the land. As the Crown is not mentioned in sect. 3, and neither sect. 1 nor sect. 2 applies to the easement of light, the right to light is not acquired by twenty years' enjoyment over Crown property (*l*); and as easements acquired by prescription, lost grant, and under the Prescription Act affect the fee simple of the servient tenement, no easement of light can be acquired against any tenant of Crown lands (*m*).

Ways and other Easements.—These include, it would seem, not only easements of the same nature as a right of way, but all other easements known to the law, *e.g.*, a right of support of buildings (*n*), but not a right to light, which is dealt with by a separate section (*o*). The right to

(*g*) *Flight* v. *Thomas*, 5 Jur. 811; 8 C. & F. 231; West. 671; 11 Ad. & E. 688.

(*h*) *Bridewell Hospital* v. *Ward*, 62 L. J. Ch. 270; 68 L. T. 212; 3 R. 228.

(*i*) *Ladyman* v. *Grave*, L. R. 6 Ch. 763; 25 L. T. (N. S.) 52; 19 W. R. 863; *Harris* v. *De Pinna*, 33 Ch. D. 238; 54 L. T. 38, 770; 50 J. P. 308, 486.

(*k*) *Richardson* v. *Graham*, [1908] 1 K. B. 39; 77 L. J. K. B. 27; 98 L. T. 360.

(*l*) *Perry* v. *Eames*, [1891] 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438; 39 W. R. 602; *Wheaton* v. *Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

(*m*) *Wheaton* v. *Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

(*n*) *Dalton* v. *Angus*, 6 App. Cas. 740, *per* Lord Selborne, 798; 50 L. J. Q. B. 689; 44 L. T. 484; 30 W. R. 191; 46 J. P. 132.

(*o*) The Prescription Act, 1832 (2 & 3 Will 4, c. 71), s. 3; *Perry* v. *Eames*, [1891] 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438; 39 W. R. 602; *Wheaton* v. *Maple & Co.*, [1893] 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 208; 41 W. R. 677; 2 R. 549.

support of land without buildings by adjoining land is a natural right independent of prescription (*p*).

These easements may be acquired under the Prescription Act, 1832 (*q*), in two ways—

(1) By enjoyment for twenty years, and the absence of evidence of facts by which a claim at common law might be defeated. The twenty years' enjoyment must be prior to action, and without interruption lasting for one year (*r*). In reckoning the twenty years, the time during which any person otherwise capable of resisting a claim was infant, *non compos mentis*, a *feme covert*, or tenant for life, or during which any action or suit has been pending which has been diligently prosecuted until abated by the death of any party thereto, is excluded (*s*). The claim may be defeated by showing that from the nature of the user by the owner of the dominant tenement, or of the occupation by the owner of the servient tenement, the latter could not have resisted the user of the right, or by showing that the easement was enjoyed secretly and without the knowledge of the owner of the servient tenement, or that the enjoyment was by his express licence.

(2) By forty years' enjoyment, in spite of any evidence such as would defeat the claim at common law, other than proof that the enjoyment was under some consent or agreement expressly given or made for that purpose by deed or writing (*t*). The forty years' enjoyment must be prior to action without interruption lasting for one year. No disability prevents the right being acquired, and when once acquired, it binds all persons having an interest in the land (*u*); but in the case of any way or other "convenient" watercourse, or use of water, the time during which the servient tenement was held under any term of life or term of years exceeding three years from the granting of such term must be excluded from the computation of the forty years,

(*p*) See note (*n*), preceding page.
(*q*) 2 & 3 Will. 4, c. 71.
(*r*) *Ibid.* s. 2.
(*s*) *Ibid.* s. 7.
(*t*) *Ibid.* s. 2.
(*u*) *Ibid.* s. 7.

in case the claim is within three years from the expiration or sooner determination of the terms resisted by the person entitled in "reversion" (*x*), which expression, in the section, does not include remainder (*y*). The word "convenient" is probably a misprint for "easement" (*z*).

In the case of ways and other easements, as in the case of light (*a*), unity of possession of the alleged dominant and servient tenement prevents a right being acquired under the Act (*b*).

The provisions of the Act relating to the acquisition of easements other than light are binding upon the Crown (*c*).

Profits à prendre.—These may be acquired under the Prescription Act, 1832 (*d*), in two ways, viz. :—

(1) By thirty years' enjoyment prior to action without interruption lasting for one year (*e*). In reckoning the thirty years, the time during which any person otherwise capable of resisting a claim was infant, *non compos mentis*, *feme covert*, or tenant for life, or during which any action or suit has been pending, which has been diligently prosecuted until abated by the death of any party thereto, must be excluded (*f*). The claim may be defeated by showing that from the nature of the user by the owner of the dominant tenement, or from the occupation of the owner of the servient tenement, the latter could not have resisted the user of the right; or by showing that the profit was enjoyed secretly and without his knowledge, or that the enjoyment was by his express licence (*g*).

(2) By sixty years' enjoyment prior to action without

(*x*) 2 & 3 Will. 4, c. 71, s. 8.
(*y*) *Laird* v. *Briggs*, 19 Ch. D. 22; 45 L. T. 238; *Symons* v. *Leaker*, 15 Q. B. D. 629; 54 L. J. Q. B. 480; 53 L. T. 227; 33 W. R. 875; 49 J. P. 775.
(*z*) *Wright* v. *Williams*, 1 M. & W. 77; Tyr. & G. 375; 1 Gale, 410; *Laird* v. *Briggs*, 19 Ch. D. 22, at p. 33; 45 L. T. 238.
(*a*) *Ante*, p. 146.
(*b*) *Damper* v. *Bassett*, [1901] 2 Ch. 350; 70 L. J. Ch. 657; 84 L. T. 682; 49 W. R. 536.
(*c*) 2 & 3 Will. 4, c. 71, s. 2.
(*d*) 2 & 3 Will. 4, c. 71.
(*e*) *Ibid.* s. 1.
(*f*) *Ibid.* s. 7.
(*g*) *Ibid.* s. 1.

interruption lasting for one year, unless it appears that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose in writing (*h*). No disability prevents the right being acquired, and when once acquired, it binds all persons having an interest in the land (*i*).

The provisions of the Act relating to the acquisition of profits *à prendre* are binding upon the Crown (*h*).

Requisitions.

1. *So far as the vendor or his solicitor is aware, is the property contracted to be sold subject to any easements or rights in the nature of easements?*

2. *What, if any, rights or easements affecting the property, such as are referred to in Condition No. , in fact exist?*

3. *It is understood that a ground floor window of the adjoining house overlooks the property contracted to be sold. Is there any right of light in connection with this window?*

4. *There appears to be a footpath running across the north-east corner of the property contracted to be sold. Is there a right of way along this footpath for any, and, if so, for what persons and purposes?*

5. *No title is shown to the private road by which the premises are approached, or to any right of way thereover. In whom is the road vested, and if there is a right of way thereover, how does it arise? If by prescription, a statutory declaration must be supplied at the vendor's expense that it has been enjoyed for upwards of 40 years as of right without interruption.*

6. *It appears from the abstract that the adjoining property formerly belonged to the same owner as the property now contracted to be sold. Is the vendor aware of any easement or convenience in the nature of an easement which was implied or reserved upon the severance of the tenements?*

(*h*) 2 & 3 Will. 4, c. 71. (*i*) *Ibid.* s. 7.

7. There is a telegraph or telephone wire passing over the property sold. To whom does the same belong? Is any rent paid therefor? Is there any easement in connection with it?

8. The property purchased appears to adjoin a common. Are there any rights of common appendant or appurtenant to the property?

9. Has any person any rights of fishing in or of passing along the portion of the River Avon which runs through the property?

ENFRANCHISEMENT OF COPYHOLDS.

An enfranchisement may be effected either under the Copyhold Acts, or independently of the Acts by agreement.

Where an enfranchisement is made under the Copyhold Act, 1894 (*k*), or the Acts which it replaces, the enfranchisement does not affect the rights or interests of any person in the land enfranchised; but those rights and interests continue to attach upon the land enfranchised, in the same way, as nearly as may be, as if the freehold had been comprised in the instrument or disposition under which the person claims (*l*).

The statutory enfranchisement can be effected even if the estate of the lord, or the tenant, is a limited estate only (*m*), and notwithstanding that the lord or the tenant is a trustee (*n*). It is carried out under the supervision of the Ministry of Agriculture, and the execution by that Ministry of the deed of enfranchisement is conclusive evidence that all the requirements of the Act with respect

(*k*) 57 & 58 Vict. c. 46.

(*l*) The Copyhold Act, 1841 (4 & 5 Vict. c. 35), s. 81; The Copyhold Act, 1852 (15 & 16 Vict. c. 51), s. 46; The Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 21 (2).

(*m*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 39; Copyhold Act, 1894 (57 & 58 Vict. c. 46), ss. 43, 44.

(*n*) Copyhold Act, 1887 (50 & 51 Vict. c. 73), ss. 39, 40; Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 44.

to proceedings to be taken have been complied with (*o*). The tenant still continues entitled to any commonable right in respect of the land enfranchised (*p*), and the estate or right of the lord or tenant in or to any mines or minerals is unaffected without the express consent of the lord or tenant respectively (*q*).

An enfranchisement made independently of the Act is effected by a conveyance of the lord's freehold to the copyhold tenant, whereupon the copyholder's estate is merged. Where, therefore, the copyholder is tenant in tail, the effect of enfranchisement is to make the former copyholder tenant in fee simple, and to bar remainders over of the copyhold estate (*r*).

Where the lord is a tenant for life within the meaning of the Settled Land Acts, he can sell the freehold and inheritance of any copyhold land parcel of the manor, with or without any exception or reservation of mines or minerals, so as to effect an enfranchisement (*s*); and where the copyholder is a tenant for life within the meaning of the same Acts, capital money arising under the Acts can be expended upon the enfranchisement of the copyholds comprised in the settlement (*t*).

Enfranchisement deeds must be registered in Middlesex or Yorkshire, if they enfranchise copyholds situate in either of these counties, notwithstanding that the Registry Acts do not extend to copyholds.

In the cases of sales, after the 31st December, 1881, of enfranchised copyholds, a purchaser has not, apart from special contract, the right to call for the title to make the enfranchisement (*u*).

See COPYHOLDS.

(*o*) Copyhold Act, 1852 (15 & 16 Vict. c. 51), s. 33; Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 61.

(*p*) 4 & 5 Vict. c. 35, s. 81; 15 & 16 Vict. c. 51, s. 45; 57 & 58 Vict. c. 46, s. 22.

(*q*) 15 & 16 Vict. c. 51, s. 48; 57 & 58 Vict. c. 46, s. 23.

(*r*) *Ex parte School Board of London, Re Hart*, 41 Ch. D. 547; 58 L. J. Ch. 752; 60 L. T. 817; 38 W. R. 61.

(*s*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3 (ii).

(*t*) *Ibid.* s. 21 (v).

(*u*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (2).

Requisitions.

1. *The copyhold title prior to enfranchisement must be adduced.*

2. *The receipt for the consideration for the enfranchisement must be abstracted and produced.*

3. *The land being copyholds enfranchised under the Copyhold Acts, the mines and minerals belong to the lord of the manor; his title must be shown and concurrence obtained.*

ENROLMENT.

The principal instruments which require enrolment for their validity are—

(1) Bargains and sales of estates of inheritance in freeholds made after July, 1536 (*x*).

(2) Gifts of hereditaments of any tenure for any charitable uses from and after the 24th June, 1736 (*y*).

(3) Assurances under the Fines and Recoveries Act, 1833, by a "tenant in tail" (as defined by the Act), except leases at a rack rent, or five-sixth parts at least of a rack rent, for a term not exceeding twenty-one years, to commence within a year from the date of the lease (*z*).

(4) Consents of protectors to the dispositions of tenants in tail (*a*).

The foregoing instruments have now to be enrolled in the Central Office of the Supreme Court within six months of their execution, and if not so enrolled they are void (*b*). Formerly, bargains and sales were enrolled in one of the Courts of Record at Westminster, and gifts to charities and assurances under the Fines and Recoveries Act, 1833, in the Court of Chancery.

(*x*) The Statute of Enrolments (27 Hen. 8, c. 16).
(*y*) The Charitable Uses Act, 1735 (9 Geo. 2, c. 36); The Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42).
(*z*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 41.
(*a*) *Ibid.* s. 46. (*b*) 42 & 43 Vict. c. 78.

Enrolment was formerly necessary in a few other cases, instances of which were given in former editions of this work, but are not inserted here, as they are now of no practical importance.

See ENTAIL—MORTMAIN AND CHARITABLE USES.

Requisitions.

1. *The vendor must execute a disentailing assurance which must be enrolled in the Central Office of the Supreme Court within six months.*

2. *The indenture of , 19 , does not appear to have been enrolled within the necessary period: How does the vendor propose to remedy this defect in title?*

ENTAIL.

In order to create an estate tail by deed before the 1st January, 1882, it was absolutely necessary (1) that the word "heirs" should be used, the word being in all cases necessary to the creation of an estate of inheritance, and (2) that words of procreation confined to the body of the donee in tail should be used; thus a gift to A. and his heirs lawfully begotten would give an estate in fee simple to A. (*c*). In the case of a will, however, no formal words were ever necessary. And now on and after the 1st January, 1882, estates tail may be limited by deed, as well as by will, by means of the words "in tail," "in tail male," "in tail female," and if these expressions are used there is no necessity for the use of the word "heirs" (*d*).

The following limitations in a will always created an estate tail:—

To A. and the heirs of his body.

To A. and his issue.

To A. and his seed (*e*).

(*c*) Bacon's Abridgment, Estate Tail B.
(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 51.
(*e*) Co. Litt. 9 b.

To A. and his heirs lawfully begotten.
To A. and after his decease to his lawful issue.
To A. and his children for ever (*f*).
To A. and his children, A. having no children at the time of the execution of the will (*g*).
To A. in tail.
And before the Wills Act, 1837 (*h*), to A., and if he die without issue over.

The above list is not intended to be exhaustive, but only to indicate some of the more common forms of limitations which have been held to create estates tail.

Although a devise "to A. and after his decease to his lawful issue" gives an estate tail, words of limitation superadded, such as "and their heirs for ever, if any" make the words "his lawful issue" words of purchase and not of limitation, and A. takes a life estate only (*i*).

In limiting an estate tail either by deed or will, the issue in tail capable of inheriting may be confined to the issue by a particular husband or wife, or may be limited to the male issue in tail, or to the female issue in tail.

Where realty is devised to several persons as tenants in common in tail with a limitation over on failure of issue of all such persons, cross remainders in tail are implied (*k*).

A tenant in tail has always had power to dispose of his estate for any period not exceeding his own life, and under a statute of Henry VIII., prior to the 1st November, 1856, had power by deed to make leases for a period not exceeding twenty-one years or three lives (*l*); but such leases, though binding upon the issue in tail, were not binding upon the reversioners or remaindermen (*m*). A tenant in tail could formerly dispose of the fee simple of the estate of which he was tenant in tail by instituting a fictitious suit (*n*). These powers were abolished at the end of 1833

(*f*) *Ward* v. *Ward*, [1921] 1 I. R. 117.
(*g*) *Wild's Case*, 6 Rep. 16 b.
(*h*) 7 Will. 4 & 1 Vict. c. 26, s. 29.
(*i*) *Morgan* v. *Thomas*, 9 Q. B. D. 643; 51 L. J. Q. B. 556; 47 L. T. 281; 31 W. R. 106.
(*k*) *Doe* d. *Gorges* v. *Webb*, 1 Taunt. 234; 9 R. R. 754.
(*l*) 32 Hen. 8, c. 28, s. 2; 19 & 20 Vict. c. 120.
(*m*) Co. Litt. 45 b.
(*n*) See FINES AND RECOVERIES.

by the Fines and Recoveries Act (*o*), which provides that a tenant in tail may dispose of lands by any disposition made or evidenced by deed in the same way as if such tenant in tail had been a tenant in fee simple, but such deed must be duly enrolled within six calendar months of execution, unless it be a lease at a rack rent, or five-sixth parts of a rack rent, for a term not exceeding twenty-one years to commence within a year from the date of the lease (*p*).

In order to effectually bar an entail, in all cases where there is a protector, his consent must be obtained, as the persons entitled in reversion or remainder will not be bound without it (*q*). The first person, other than a lessee at a rent, tenant in dower or bare trustee, who takes under a settlement an estate for years, determinable on a life or lives, or any greater estate, not being merely an estate for years, is the protector of the settlement jointly with the persons (if any) appointed as such by the settlement (*r*). Where there are two or more protectorships, the office passes to the survivor or survivors, unless a contrary intention is clearly indicated by the settlement (*s*). Where a married woman would, if single, be protector of a settlement in respect of a prior estate, she alone is the protector if such prior estate is settled or agreed to be settled for her separate use. But where property is not so settled the husband must join (*t*), and this may possibly apply even to property which belongs to her under the Married Women's Property Act.

A married woman need not acknowledge a deed executed solely for the purpose of giving her consent to the disposition of a tenant in tail (*u*); but, of course, if besides consenting as protector she is dealing with her life estate, acknowledgment will be necessary in cases where she is

(*o*) 3 & 4 Will. 4, c. 74.
(*p*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 15, 41.
(*q*) *Ibid.* s. 34.
(*r*) *Ibid.* ss. 22, 26, 27, 28.
(*s*) *Cohen* v. *Bayley-Worthington*, [1908] A. C. 97; 77 L. J. Ch. 363; 98 L. T. 461.
(*t*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 25.
(*u*) *Ibid.* s. 79.

not entitled for her separate use. The consent of the protector or protectors (if any) must be given either by the assurance by which the disposition is effected, or by a separate deed, and in the latter case the separate deed must be executed on or before the day on which such assurance is made and must be enrolled at or before the time when the assurance is enrolled (*x*). A protector is not in a fiduciary position, and may therefore sell his consent (*y*).

The effect of barring an estate tail without the consent of the protector is to create a base fee. A base fee has all the incidents of an estate in fee simple, except that it terminates at the same time as the original estate tail would have terminated : it may, by deed enrolled, be turned into a fee simple by the person who would have been tenant in tail had the estate not been barred (*z*); the consent of the protector, if any, is requisite (*a*). If a base fee and the reversion or remainder in fee simple expectant thereon become united in the same person the base fee is thereupon enlarged into a fee simple (*b*).

Estates tail granted by the Crown in reward for service and estates tail after possibility of issue extinct cannot be barred (*c*); nor could they before the Fines and Recoveries Act, 1833 (*d*).

The provisions of the Fines and Recoveries Act, 1833, relating to the barring of entails extend to equitable as well as legal estates in freeholds. As regards copyholds where there is a custom to entail, the mode of barring the entail prescribed by the Act is by surrender, or, in the case of equitable estates, by deed or surrender; but the consent of the protector is still requisite. Entry on the court rolls within six calendar months after the deed is executed or the surrender takes place is substituted for enrolment (*e*).

(*x*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 42, 46.
(*y*) *Banks* v. *Le Despencer*, 9 L. J. Ch. 185; 4 Jur. 601; 11 Sim. 508.
(*z*) 3 & 4 Will. 4, c. 74, ss. 1, 15.
(*a*) *Ibid.* s. 34.
(*b*) *Ibid.* s. 39.
(*c*) *Ibid.* s. 18.
(*d*) 34 & 35 Hen. 8, c. 20.
(*e*) 3 & 4 Will. 4, c. 74, ss. 50—54.

There can be no entail even of an equitable interest in copyholds unless there is a custom to entail.

On the bankruptcy of a tenant in tail, the trustee in bankruptcy may deal with the estate of the bankrupt in the same manner as the bankrupt might have dealt with it (*f*).

A tenant in tail has the powers of a tenant for life under the Settled Land Acts, notwithstanding that he may be restrained by Act of Parliament from barring or defeating his estate tail, and notwithstanding that the reversion is in the Crown, and notwithstanding that the possibility of issue in tail is extinct (*g*).

Although a tenant in tail may, by a sale under the Settled Land Act, bind the Crown, he cannot dispose of land purchased with money provided by Parliament in consideration of public services if restrained by statute from barring or defeating his estate tail (*h*).

A person entitled to a base fee has also the powers of a tenant for life although the reversion may be in the Crown, and so that the exercise by him of his powers binds the Crown (*i*).

In cases where the rights of a tenant in tail are barred under the Real Property Limitation Acts, 1833 or 1874, all persons whom the tenant in tail might have barred lose their rights (*k*), and where time has begun to run against a tenant in tail, it will continue to run against persons whose rights such tenant in tail might have barred notwithstanding they may be under disability (*l*); and where a tenant in tail has died, such persons can only recover within the time during which they might have recovered if he had continued to live (*m*). Where a tenant in tail has made an assurance which does not bar estates taking effect after or

(*f*) 3 & 4 Will. 4, c. 74, ss. 56—73; The Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 56; Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 55 (5).
(*g*) 45 & 46 Vict. c. 38, s. 58 (1) (i), (vii).
(*h*) *Ibid.* s. 58 (1) (i).
(*i*) *Ibid.* s. 58 (1) (iii).
(*k*) 3 & 4 Will. 4, c. 27, s. 21.
(*l*) *Goodall* v. *Skerratt*, 24 L. J. Ch. 323; 23 L. T. (O. S.) 6; 3 W. R. 152; 1 Jur. (N. S.) 57; 3 Drew. 216; 3 Eq. R. 295.
(*m*) 3 & 4 Will. 4, c. 27, s. 22.

in defeasance of his estate tail, the rights of the remaindermen or reversioners will be barred twelve years after the earliest time when such assurance would have barred their rights had it then been executed by the person who would have been entitled to his estate tail if such assurance had not been executed (*n*).

Estates tail are subject to dower in the same way as estates in fee simple, but in the case of women married after the 31st December, 1833, the dower may be barred by a declaration by the husband against dower in a deed or will (*o*). Dower does not attach unless the wife might have had issue who could have inherited the fee tail (*p*); the right to it is lost by divorce. When issue is born alive capable of inheriting a husband is entitled to curtesy out of his wife's estate tail.

An estate tail cannot be disposed of by will. An estate in tail general or special descends in all respects like a fee simple, except that it is confined to the issue of the person or persons named. An estate in tail male descends only to male issue who trace their descent entirely through males, and an estate in tail female descends only to female issue who trace their descent entirely through females (*q*).

Notwithstanding the provisions of the Fines and Recoveries Act, 1833, purporting to exclude the jurisdiction of the Court with regard to specific performance of contracts in cases of disposition of lands by tenants in tail (*r*), the Court may decree specific performance of a contract for disentailment entered into by a tenant in tail (*s*).

See ENROLMENT—SETTLED LAND.

Requisitions.

1. *The disentailing assurance recently executed by the vendor must be duly enrolled before completion of the conveyance to the purchaser.*

(*n*) 37 & 38 Vict. c. 57, s. 6.
(*o*) Dower Act, 1833 (3 & 4 Will. 4, c. 105), ss. 6, 7.
(*p*) Co. Litt. 31 a.
(*q*) Burton, s. 649.
(*r*) 3 & 4 Will. 4, c. 74, s. 47.
(*s*) *Bankes* v. *Small*, 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765.

2. *Under the limitations of the deed of , 19 , Mrs. A. became tenant in tail in possession. Her husband, who is now entitled to an estate by the curtesy, must concur in the assurance to the purchaser; he must also, as protector of the settlement, consent to the disentailing assurance.*

3. *Evidence must be adduced to show that A. B., the late tenant in tail, died without issue.*

4. *Evidence must be furnished that the surrender of* 19 *made to bar the entail created by the settlement of* 19 *was entered upon the court rolls within six months after the surrender took place.*

EQUITABLE ESTATES.

No particular words are necessary to confer an equitable estate in fee, thus a limitation in a deed, of real estate to A. and B. and their heirs upon trust for C. without words of inheritance, may confer the equitable fee upon C. if the intention is sufficiently shown upon the face of the instrument (*t*); but if the limitation in a voluntary settlement is to A. and B. and the survivor merely upon trust for C., A. and B. will take only an estate in the settlor's equitable freeholds for their lives and the life of the survivor (*u*).

Equitable estates are, in general, subject to the same rules as legal estates, and descend in the same way. The equitable estates of married women are subject to their husbands' curtesy, but prior to the Dower Act, 1833 (*x*), the husband's equitable estates were not subject to dower.

Equitable estates are free from any technical rules which depend upon incidents of tenure : thus, an equitable contingent remainder will not fail for the want of a particular estate to support it. Again, an equitable estate or interest

(*t*) *Re Tringham's Trusts, Tringham* v. *Greenhill*, [1904] 2 Ch. 487; 73 L. J. Ch. 693; 91 L. T. 370; 20 T. L. R. 657.
(*u*) *Re Irwin, Irwin* v. *Parkes*, [1904] 2 Ch. 752; 73 L. J. Ch. 832.
(*x*) 3 & 4 Will. 4, c. 105.

was not, prior to the 14th August, 1884, liable to escheat (*y*).

No formality was required before the Statute of Frauds to a declaration of trust, or to the transfer of an equitable estate; but that statute provided that declarations of trust of lands, tenements, and hereditaments, including chattels real (*z*) and copyholds (*a*), should be proved by some writing signed by the person who is by law enabled to declare such trusts, or else they should be void (*b*). This does not apply to trusts arising by construction, implication, or operation of law (*c*).

A contract for sale binding both parties makes the vendor at once a trustee for the purchaser, and thus gives the equitable interest to the purchaser, but the Statute of Frauds requires any contract relating to land, or any interest in land, to be in writing signed by the party to be charged (*d*). All assignments of equitable interests are void unless in writing signed by the assignor (*e*).

An equity of redemption may be transferred by a binding agreement and a receipt for the purchase money; so also a receipt for the mortgage money in the case of a mortgage of an equity of redemption is sufficient discharge without any reconveyance.

A deed is necessary to convey an equitable interest in the case of disentailing assurances under the Fines and Recoveries Act, 1833 (*f*), and such equitable interests of married women, as must be conveyed by deed acknowledged under the Fines and Recoveries Act, 1833 (*g*), the Real Property Act, 1845 (*h*), or the Married Women's Reversionary Interests Act, 1857 (*i*).

If a *bonâ fide* purchaser for valuable consideration

(*y*) Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71).
(*z*) *Forster* v. *Hale*, 5 Ves. jun. 308; 4 R. R. 128.
(*a*) *Withers* v. *Withers*, Amb. 151.
(*b*) 29 Car. 2, c. 3, s. 7.
(*c*) *Ibid.* s. 8.
(*d*) *Ibid.* s. 4.
(*e*) *Ibid.* s. 9.
(*f*) 3 & 4 Will. 4, c. 74.
(*g*) *Ibid.*
(*h*) 8 & 9 Vict. c. 106, ss. 6, 7.
(*i*) 20 & 21 Vict. c. 57.

acquire a legal estate or interest in any property without notice of an equitable estate or interest, he will be entitled to retain the property free from the equitable estate or interest of which he had no notice. This rule is a great protection to a purchaser, and he should, in the absence of any circumstances appearing which give rise to suspicion, rely upon it and abstain from making any such requisition as—"Was the money which is stated to have belonged to the mortgagees on a joint account in fact trust money?"

A purchaser cannot, however, avoid the effect of notice of what appears on his vendor's title by abstaining from inquiring into it; if he does not so inquire, he will be affected with notice of what appears upon it (*k*).

Where trustees advance trust money on mortgage, it is the usual practice to keep off the title all reference to the trust. If, however, this course be not adopted a purchaser or transferee should require production of the settlement in order to satisfy himself that it contains nothing interfering with the power of the trustees to sell or transfer, as the case may be.

See EQUITABLE MORTGAGES—ESCHEAT—MARRIED WOMEN—MORTGAGES—NOTICE—SETTLED LAND.

Requisitions.

1. *The sale to the vendor is stated to be in pursuance of an agreement "in writing": As the purchaser has notice of this agreement, it must be abstracted and produced.*

2. *The vendor has only the equitable estate in the premises; the legal estate appears to be outstanding in the legal personal representatives of A. B. deceased; they must concur in the conveyance to the purchaser.*

3. *The mortgage money being expressed to be held subject to the trusts of an indenture of , 19 , such indenture must be produced for the inspection of the purchaser's solicitor in order that he may satisfy himself that it contains nothing affecting the vendor's*

(*k*) *Oliver* v. *Hinton*, [1899] 2 Ch. 264; 68 L. J. Ch. 94; 79 L. T. 729.

power to make a good title; and a statutory acknowledgment of the right of the purchaser to the production of such indenture must be given.

EQUITABLE MORTGAGES.

Notwithstanding the provisions of the Statute of Frauds (*l*), equitable mortgages of land may be effected without writing by a deposit of title deeds (*m*).

A deposit of title deeds accompanied by a memorandum is often used to secure an advance intended to be made for a short period only. The stamp duty on such a memorandum under hand only is 1*s*. per 100*l*. instead of 2*s*. 6*d*.

The powers conferred upon mortgagees under the Conveyancing Act, 1881, apply only to mortgages made by deed: A power of attorney to execute a deed to convey the legal estate must be given by deed: For these reasons equitable mortgages are often made by deed. As, however, an equitable mortgage when under seal requires the same stamp as if it were in the ordinary legal form, and is very little shorter than a legal mortgage, it seems best, in all cases when an instrument under seal is used, to take a legal mortgage.

An equitable mortgagee under a mortgage or charge under seal executed on or after the 28th August, 1860, had, under Lord Cranworth's Act (*n*), power to sell after the expiration of a year after the principal became payable, or when any interest has been in arrear for six months, or after an omission to pay a premium on any assurance payable under the mortgage deed. Lord Cranworth's Act was repealed by the Conveyancing Act, 1881, which provides (*o*) that in respect of mortgage deeds executed on or after the 1st January, 1882, a mortgagee where the mortgage is made by deed shall have power to sell; but the Act requires either notice to have been served on the mortgagor, and default made for

(*l*) 29 Car. 2, c. 3, s. 4.
(*m*) *Russel* v. *Russel*, 1 B. C. C. 269.
(*n*) 23 & 24 Vict. c. 145, s. 11.
(*o*) 44 & 45 Vict. c. 41, s. 19.

three months, or some interest to be in arrear for two months, or the breach of some provision contained in the mortgage deed other than a covenant for payment of mortgage money or interest (*p*).

An equitable mortgagee in fee by deed selling under the power contained in Lord Cranworth's Act (*q*) could convey the legal estate which was in his mortgagor (*r*); but an equitable mortgagee selling under the Conveyancing Act (*s*) has not this power (*t*), although it may, since the 31st December, 1882, be conferred by means of an irrevocable power of attorney (*u*).

An equitable mortgagee who parts with or does not obtain possession of the title deeds will be postponed to a subsequent equitable mortgagee who advances money on the security of the deeds without notice of the prior equitable mortgage (*x*). It requires the most gross negligence to induce the Court to postpone a legal mortgagee who has parted with or not obtained possession of the title deeds (*y*).

An equitable mortgagee has no right to be paid the rents of the mortgaged property until he has obtained an order of the Court (*z*).

See EQUITABLE ESTATES—MORTGAGES—TACKING.

Requisition.

The charge on Blackacre in favour of the vendor contains no express power of sale, and does not appear to be under seal. It is presumed that the vendor can procure the concurrence of the mortgagor; if not, how is it proposed to make a title?

(*p*) 44 & 45 Vict. c. 41, s. 20.
(*q*) 23 & 24 Vict. c. 145, ss. 11, 15.
(*r*) *Re Solomon and Meagher's Contract*, 40 Ch. D. 508; 58 L. J. Ch. 339; 60 L. T. 487; 37 W. R. 331.
(*s*) 44 & 45 Vict. c. 41, s. 19.
(*t*) *Re Hodson and Howe's Contract*, 35 Ch. D. 668; 56 L. J. Ch. 755; 56 L. T. 837; 35 W. R. 553.
(*u*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 8.
(*x*) *Waldron* v. *Sloper*, 1 Drew. 193; *Keate* v. *Phillips*, 18 Ch. D. 560; 50 L. J. Ch. 664; 44 L. T. 731; 29 W. R. 710.
(*y*) *Hewitt* v. *Loosemore*, 21 L. J. Ch. 69; 9 Ha. 449; 6 W. R. 637.
(*z*) *Finck* v. *Tranter*, [1905] 1 K. B. 427; 74 L. J. K. B. 345; 92 L. T. 297.

EQUITY OF REDEMPTION.

See EQUITABLE ESTATES.

ERASURE.

See DEEDS—WILLS.

ESCHEAT.

On the death of a tenant in fee simple without heirs and without having disposed by will of the estate, it escheats to the Crown or other chief lord entitled to the seignory. In the case of copyhold property, the chief lord is the lord of the manor. Formerly, equitable estates and incorporeal interests were not liable to escheat, but after the 13th August, 1884, the law of escheat applies to them in the same manner as to corporeal hereditaments (*a*).

See CONVICTS, TRAITORS AND FELONS.

Requisition.

A. B., the predecessor in title of the vendor, appears to have become entitled through the death without heirs, before the 14th August, 1884, of C. D., his cestui que trust. What proof does the vendor offer of the fact that C. D. had no heirs?

ESTATE CLAUSE.

See DEEDS.

(*a*) The Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71).

ESTATE DUTY.

See DEATH DUTIES.

ESTATE TAIL.

See ENTAIL.

ESTOPPEL.

A judgment of a Court of Record *inter partes* is conclusive as between parties and persons claiming under them (*b*). The modern County Court is a Court of Record; its judgments, therefore, upon matters within its jurisdiction, are conclusive *inter partes*, as are those of the superior Courts.

The nature of estoppel by representation cannot be better described than in the language of Lord Selborne in *The Citizens' Bank of Louisiana* v. *The First National Bank of New Orleans* (*c*). "I apprehend that nothing can be more certain than this, that the doctrine of equitable estoppel by representation is a wholly different thing from contract, or promise, or equitable assignment, or anything of that sort. The foundation of that doctrine, which is a very important one, and certainly not one likely to be departed from, is this, that if a man dealing with another for value makes statements to him as to existing facts, which being stated would affect the contract, and without reliance upon which, or without the statement of which, the party would not enter into the contract, and which being otherwise than as they were stated, would leave the situation after the contract different from what it would have been if the representations had not been made; then the person making those representations shall, so far as the powers of a Court of Equity extend, be treated as if the representations were

(*b*) *Duchess of Kingston's Case*, 20 State Trials, 355; 1 Leach, C. C. 146.

(*c*) L. R. 6 H. L. 353, at p. 360; 43 L. J. Ch. 269; 22 W. R. 194.

true, and shall be compelled to make them good. But those must be representations concerning existing facts."

Statements or recitals contained in a deed will, in general, be taken as statements upon which some or all of the parties are intended to act, and are consequently statements which parties to the deed are estopped from denying. Thus, a recital that the vendor is seised in fee is a statement upon which the purchaser is intended to act, and in an action brought upon the deed by the purchaser or a person claiming under him, the vendor will not be allowed to dispute the accuracy of such recital.

A married woman will not be estopped by a representation in respect of property subject to a restraint on anticipation (*d*), nor can infants be estopped from pleading their infancy (*e*), nor will a corporation be estopped by its deed from setting up the defence of *ultra vires*.

As between landlord and tenant when a lease has been granted, both the landlord and the tenant are, during the term, estopped from denying that the landlord had any interest out of which the lease could take effect (*f*).

Requisition.

As the second mortgage by the vendor to B. was made by deed and contained a recital that the vendor was seised in fee, but no reference to the first mortgage, it would seem that when the vendor obtained the reconveyance of the legal estate from the first mortgagee the second mortgage took effect as a legal mortgage by way of estoppel (*g*)*: a proper reconveyance from the second mortgagee, must, therefore, be obtained, or he must concur in the conveyance to the purchaser; under the circumstances, a mere receipt for the mortgage money is not sufficient.*

(*d*) *Bateman (Lady)* v. *Faber*, [1898] 1 Ch. 144; 67 L. J. Ch. 130; 77 L. T. 576; 46 W. R. 215.

(*e*) *Bartlett* v. *Wells*, 31 L. J. Q. B. 57; 5 L. T. 607; 10 W. R. 229; 8 Jur. (N. S.) 762; 1 B. & S. 836.

(*f*) Co. Litt. 47 b.

(*g*) *General Finance, Mortgage and Discount Co.* v. *Liberator Permanent Benefit Building Society*, 10 Ch. D. 15; 39 L. T. 600; 27 W. R. 210.

EXCHANGE.

See INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

EXECUTION.

See APPOINTMENTS—DEEDS—WILLS.

EXECUTORS, SALES AND MORTGAGES BY.

Notwithstanding the provisions of the Land Transfer Act, 1897, referred to below (*h*), the questions have still to be not unfrequently considered as to the ability of executors to make a title to real estate in cases (i.) where such estate was devised to them, but without an express power to sell or mortgage; and (ii.) where the estate was not devised to them at all.

In the following cases executors had power to sell or mortgage the testator's real property :—

(i) Where there was a devise to the executors but no express power to sell or mortgage.

(1) Where the devise was subject to a charge of debts, the executors had an implied power to sell or mortgage for the purpose of raising such debts (*i*), even if the devise was a beneficial devise (*k*).

(2) Where the executors were devisees in trust under a will coming into operation on or after the 13th August, 1859, and the devise was subject to a charge of debts, legacies, or other specific sums, they had a statutory power to

(*h*) P. 170.
(*i*) *Corser* v. *Cartwright*, L. R. 7 H. L. 731; 45 L. J. Ch. 605.
(*k*) *Re Henson, Chester* v. *Henson*, [1908] 2 Ch. 356.

sell or mortgage for the purpose of raising such debts, legacies, or sums (*l*).

(ii.) Where there was no devise to the executors.

(3) A common law power arose where a testator by his will, expressly or impliedly, authorized his executors to sell freehold land, but did not devise the land to them (*m*).

(4) On a testator's death on or after the 13th August, 1859, a statutory power of sale arose where such testator had expressly or impliedly charged his real estate, or any specific portion of it, with the payment of debts or any legacy or other sum of money and had not devised the hereditaments charged in such terms as that his whole estate and interest therein became vested in any trustee or trustees or in any person in fee or in tail beneficially (*n*).

(5) Where estate duty was payable in respect of real property passing on a death, and the persons accountable requested the executor to pay it, he had power to sell or mortgage such property (*o*).

A charge of legacies on all the real estate does not *primâ facie* charge lands specifically devised (*p*); but if the charge is for debts and legacies, then not only the debts but also the legacies are charged, even on lands specifically devised (*q*).

An implied charge arises—

(1) Where there is a general direction by a testator that his debts shall be paid (*r*), but a direction to

(*l*) Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 14.
(*m*) Co. Litt. 113 a, 236 a. In this case the proper form of conveyance is a bargain and sale. *Ibid.*
(*n*) Lord St. Leonards' Act (22 & 23 Vict. c. 35), ss. 16, 18. For explanation of effect of sections, see *ante*, p. 65.
(*o*) 57 & 58 Vict. c. 30, ss. 6, 9, 22.
(*p*) *Conron* v. *Conron*, 7 H. L. C. 168.
(*q*) *Re Emmerton, Maskell* v. *Farrington*, 7 L. T. 301; 11 W. R. 127; 8 Jur. (N. S.) 1198; 1 N. R. 37.
(*r*) *Shallcross* v. *Finden*, 3 Ves. jun. 738; 3 R. R. 75.

the executors to pay debts charges only the real estate, if any, devised to them (*s*).

(2) A direction for sale of real estate, and that the proceeds shall form part of the residuary personal estate of the testator, subjects the real estate to all charges affecting the personal estate (*t*).

(3) Where legacies are bequeathed and the residues of the real and personal estate are afterwards comprised in one mass, the legacies are charged on the residuary real estate (*u*).

It is to be observed that a charge unaccompanied by an express direction to the trustees to pay did not vest the legal estates in the trustees, and this was so even if there was a devise of the estate to trustees for purposes other than payment of the debts or legacies charged (*x*).

A purchaser from an executor is not bound to inquire whether debts remain unpaid, unless twenty years have elapsed from the date of the testator's decease (*y*). After twenty years have elapsed since the testator's decease, a presumption arises that the debts have been paid, and the purchaser is therefore put upon inquiry: This rule does not, however, always apply to the case of an executor selling leaseholds of his testator (*z*), nor it is conceived, in the case of persons dying after the 31st December, 1897, to the case of an executor selling realty.

But in the case of an executor selling freeholds under the Land Transfer Act, 1897, or even leaseholds, a purchaser should, it is suggested, invariably make the inquiry after twenty years.

An executor may sell or mortgage or otherwise deal with

(*s*) *Henvell* v. *Whitaker*, 3 Russ. 343; *Keeling* v. *Brown*, 5 Ves. jun. 359; 5 R. R. 70.

(*t*) *Kidney* v. *Coussmaker*, *Williams* v. *Coussmaker*, 2 Ves. jun. 267; 2 R. R. 118; 7 Bro. P. C. 573.

(*u*) *Greville* v. *Brown*, 7 H. L. C. 689; 34 L. T. (O. S.) 8; 7 W. R. 673; 5 Jur. (N. S.) 849.

(*x*) *Re Adams and Perry's Contract*, [1899] 1 Ch. 554; 68 L. J. Ch. 259; 80 L. T. 149; 47 W. R. 326.

(*y*) *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465; 51 L. J. Ch. 434; 46 L. T. 542; 30 W. R. 801.

(*z*) *Re Whistler*, 35 Ch. D. 561; 56 L. J. Ch. 827; 57 L. T. 79; 35 W. R. 662.

leaseholds even though specifically bequeathed, and one only of several executors can make a title thereto and give a good receipt to a purchaser. And where the death took place on or after 2nd August, 1894, an executor may for the purpose of raising estate duty sell or mortgage leaseholds over which the deceased had at his death a general power of appointment, whether *inter vivos* or by will (*a*).

On the death of one of two or more executors the office survives to those remaining, and on the death after probate of a sole or sole surviving executor the administration of the estate of which he was executor devolves upon the executor of such executor (*b*), but not upon the administrator of such executor.

Where at the death of a person dying after the 31st December, 1881, there was a subsisting contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs general in any land, his executors could convey the land for all the estate and interest vested in him at his death in any manner proper for giving effect to the contract (*c*).

In the case of persons dying after the 31st December, 1897, where real estate is vested in any person without a right in any other person to take by survivorship, or where such person executes by will a general power of appointment, on his death, notwithstanding any testamentary disposition, such real estate devolves to and becomes vested in his personal representative like a chattel real (*d*); and he may consequently sell, mortgage, or otherwise deal with it; this does not, however, apply to copyholds or customary freeholds (*e*), and all the legal personal representatives must join in any sale or mortgage, unless it is by the direction of the Court (*f*), but continuing executors where some have died, and acting executors where some have renounced, can make a title; an executor cannot however renounce after

(*a*) Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 6, 9.
(*b*) 2 Blackstone, 506.
(*c*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 4.
(*d*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (1), (2).
(*e*) *Ibid.* s. 1 (4).
(*f*) *Ibid.* s. 2 (2).

doing acts of administration (*g*). Special executors as to foreign property are not necessary parties to a sale by general executors of land in England (*h*). On the personal representative assenting, devised real estate vests in the devisee, but a conveyance is required to an heir-at-law.

Before the 1st January, 1912, where one or more of the executors have not proved the will, but have retained the right to join in the probate, it was necessary for such executor or executors to join in any conveyance of real estate (other than copyholds) (*i*), but in dispositions after 31st December, 1911, only the proving executors need convey (*k*).

An executor cannot sell the surface of land without the minerals except with the sanction of the Court (*l*).

See LEASEHOLD PROPERTY—MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE—REAL REPRESENTATIVES—TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE—WILLS.

Requisitions.

1. *Having regard to the fact that their testator died more than twenty years ago, the vendors must either furnish the purchaser with proof that some of his debts still remain unpaid, or all the persons beneficially entitled must join in the conveyance.*

2. *The leasehold property referred to in the particulars was specifically bequeathed to the testator's daughter X.: it is presumed that the vendors have not assented to this bequest.*

(*g*) *Re Stevens, Cooke* v. *Stevens*, [1897] 1 Ch. 422; 66 L. J. Ch. 155; 76 L. T. 18; 45 W. R. 284.
(*h*) *Re Cohen's Executors and London County Council*, [1902] 1 Ch. 187; 71 L. J. Ch. 164; 86 L. T. 73; 50 W. R. 117.
(*i*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.
(*k*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 12.
(*l*) Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 44 (1) and 50, *Re Wickstead's Trusts*, [1921] 2 Ch. 184.

EXECUTORY INTERESTS.

Executory interests, that is to say, future estates other than estates in remainder, in real estate, may be created either *inter vivos* or by will. They can only be created *inter vivos* under the Statute of Uses (*m*) by means of a springing or shifting use, and as the Statute of Uses does not apply to terms of years, an executory interest in leaseholds cannot be limited *inter vivos*. By will, however, an executory interest may be created without the aid of the Statute of Uses by merely stating the event upon which the estate given is to arise or shift, and even a chattel interest can by this means be given by will to one person for life and after his decease to another (*n*).

A remainder limited by means of a shifting or springing use is subject to the common law rules affecting remainders, and is not considered to be an executory interest (*o*).

Executory interests are subject to the rule against perpetuities.

Executory interests limited in default of issue become incapable of taking effect as soon as any of the issue attain twenty-one (*p*).

See ISSUE—PERPETUITIES—USES.

Requisition.

The limitation by the indenture of settlement of , 19 , *of the leasehold portion of the property to the use of the vendors after the marriage of A. was void: it will therefore be necessary to obtain the concurrence of A.*

(*m*) 27 Hen. 8, c. 10.
(*n*) Fearne, 401—404.
(*o*) *Chudleigh's Case*, 1 Rep. 120 a.
(*p*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 10.

EXPECTANT HEIRS.

Courts of Equity always readily set aside the sale of expectancies by heirs and others on the ground that an inadequate price had been given; and notwithstanding that by a statute passed in 1867 (*q*) it was enacted that no purchase of any reversionary interest in real or personal estate, made *bonâ fide* and without fraud or unfair dealing, should, after the 31st December, 1867, be set aside merely on the ground of undervalue, such sales will still, if the undervalue is sufficiently gross, be set aside by the Court, on the principle that such undervalue is evidence of unfair dealing (*r*).

Requisition.

The amount paid by the vendor for the reversionary interest contracted to be sold was less than one-fourth of its actuarial value; having regard to the extreme inadequacy of the consideration, what evidence does the vendor offer that under the circumstances of the case the transaction was reasonable and bonâ fide? *Unless the purchaser is satisfied as to this, the concurrence of the original owner must be obtained.*

FEE SIMPLE.

In conveyances and mortgages of estates in fee simple executed before the 1st January, 1882, it was necessary to use the words "and his heirs" or "and their heirs." No other words, though they might have had the same meaning, would suffice: Thus, a limitation to A. and his "heir," or to A. "or" his heirs, or to A. "in fee simple," would not give to A. any greater estate than an estate for his life. But since the 31st December, 1881, the words "in fee simple" may be employed to convey an estate to a person

(*q*) Sales of Reversions Act, 1867 (31 & 32 Vict. c. 4).
(*r*) *Tyler* v. *Yates*, L. R. 6 Ch. 665; 40 L. J. Ch. 768; 25 L. T. 284; 19 W. R. 909.

in fee simple (*s*); no words other than "and his heirs" or "in fee simple" are even now sufficient to pass the fee.

In the case of a corporation aggregate, no words of limitation are or ever were necessary; it is, however, usual to add some such words; the proper words in such a case are "and their assigns," but the words "and their successors" are often used. When it is intended to limit an estate to a corporation sole, other than the Crown, the words "and his successors" are necessary, as the provisions of the Conveyancing Act, s. 51, do not apply; but the Crown can take a fee simple without words of limitation.

If an estate of freehold is limited to A., and afterwards, either mediately or immediately by the same instrument, an estate is limited to his heirs, or the heirs of his body, then, subject to any intervening estates, there is vested in A. an estate in fee simple or in tail in the same way as if the ultimate estate had been limited to A. and his heirs or the heirs of his body (*t*); and if there be no estate intervening between A.'s estate of freehold and his ultimate estate of inheritance, his estate of freehold merges in the ultimate remainder, and he at once takes an estate of inheritance; thus, a gift to A. during the life of B., with remainder to the heirs of A., gives A. an immediate estate in fee simple. This rule, which is known as the rule in *Shelley's Case*, does not apply unless the estates limited to A. and the estate limited to his heirs are both legal or both equitable.

In the case of copyhold lands by special custom, estates of inheritance may be limited in surrenders without the use of the word "heirs."

An equitable estate in fee simple may be conferred without any express words of inheritance (*u*).

Prior to the passing of the Wills Act (*x*) in 1837, a devise of real estate to A. passed a life interest only, unless a contrary intention appeared in the will; very small indications

(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 51.
(*t*) *Shelley's Case*, 1 Rep. 93 b.
(*u*) *Re Oliver's Settlement, Evered* v. *Leigh*, [1905] 1 Ch. 191; 74 L. J. Ch. 62; 53 W. R. 215; 21 T. L. R. 61.
(*x*) 7 Will. 4 & 1 Vict. c. 26.

were held to be sufficient to show such intention. The old law on the point is now of no practical importance, as the statute referred to (*y*), which applies to wills made or published on or after the 1st January, 1838, provides that where real property is devised without words of limitation, such devise passes the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appears.

Requisitions.

1. *The rentcharge contracted to be sold was limited "to the use that A. may for ever hereafter receive, &c." As there are no words of limitation, it would seem that A. only takes an estate for life in the rentcharge: how does the vendor propose to get over this difficulty?*

2. *The copyhold property was surrendered to the vendor "and his sequels in right." A special custom of the manor must be shown to exist whereby these words will pass an estate of inheritance without the use of the word "heirs."*

FELONS.

See CONVICTS, TRAITORS AND FELONS.

FEOFFMENTS.

The method of conveying by feoffment freehold lands of which the conveying party is seised, has now fallen into disuse: It consists of a delivery of the possession of the land, technically called "livery of seisin." Writing was rendered necessary by the Statute of Frauds; in order to pass an estate of freehold, such writing must be signed by the feoffor or his agent thereunto lawfully authorized by

(*y*) 7 Will. 4 & 1 Vict. c. 26, s. 28.

writing (*z*). A feoffment made after the 31st September, 1844, other than a feoffment made under a custom by an infant, must be evidenced by deed (*a*).

All land which is subject to the custom of gavelkind can be conveyed by feoffment by a tenant seised of it as soon as he has attained the age of fifteen, but an infant cannot appoint an attorney to deliver seisin. A deed is not required for a feoffment made under a custom by an infant, but writing is necessary to satisfy the Statute of Frauds.

The tortious operation of feoffments was abolished as from the 1st January, 1845 (*b*), and this subject is now of no practical importance.

See GAVELKIND.

Requisition.

Evidence must be produced that the purchase-money was actually paid to the feoffor, whose receipt is not sufficient, as he was an infant at the time of the feoffment.

FIDUCIARY RELATIONSHIP.

In certain cases where this relationship exists sales and purchases are liable to be set aside in equity on the ground that the vendor or purchaser, as the case may be, has not the necessary authority to sell or buy; and a sub-purchaser who has notice of the circumstances is in no better position than the original purchaser. The same principles apply to mortgages and leases, mortgagees and lessees being purchasers *pro tanto*.

The following transactions are voidable on this ground—

(1) A sale to himself or to a trustee for himself by a trustee for sale (*c*).

(*z*) 29 Car. 2, c. 3, s. 1.
(*a*) Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3.
(*b*) 7 & 8 Vict. c. 76, s. 7; 8 & 9 Vict. c. 106, s. 4.
(*c*) *Fox* v. *Mackreth*, 2 R. R. 55; 2 B. C. C. 400; 4 Bro. P. C. 258; 2 Cox, 158, 320.

(2) A purchase from himself of from a trustee for himself by a trustee with power to purchase (*d*).

(3) A sale by a trustee in bankruptcy to himself or to a trustee for himself (*e*).

(4) A sale by an executor or administrator to himself or to a trustee for himself, or to one of his co-executors or co-administrators (*f*).

(5) A sale to himself by an agent or auctioneer employed to sell (*g*).

(6) A purchase from himself by an agent employed to buy (*h*).

(7) A sale to himself or to a trustee for himself by a mortgagee under his power of sale (*i*).

(8) A sale to a director by his company (*k*), and by a director to his company (*l*); also the like transactions between a governor of a charity and the charity (*m*).

In addition to these cases, there are cases of another class where the Court looks with great suspicion on transactions *inter vivos* on account of the fiduciary relation existing between the parties. These relations include—

Solicitor and client;
Doctor and patient;
Minister and member of congregation;
Trustee and beneficiary;
Parent and child;
Guardian and ward;
Agent and principal.

Transactions between parties in these relationships are liable to be impeached at the instance of the last-mentioned

(*d*) *Ex parte Lacey*, 6 Ves. jun. 625; 6 R. R. 9.
(*e*) *Ex parte Lacey*, 6 Ves. jun. 625, note at p. 630; 6 R. R. 9.
(*f*) *Killick* v. *Flexney*, 4 B. C. C. 161.
(*g*) *Oliver* v. *Court*, 22 R. R. 720; Daniell, 301; 8 Price, 127.
(*h*) *East India Co.* v. *Henchman*, 1 Ves. jun. 287.
(*i*) *Martinson* v. *Clowes*, 21 Ch. D. 857; 51 L. J. Ch. 594; 46 L. T. 882; 30 W. R. 795.
(*k*) *Aberdeen Rail. Co.* v. *Blackie Brothers*, 2 Eq. Rep. 1281; 1 Macq. 461; 23 L. T. 315.
(*l*) *Imperial Mercantile Credit Association* (*The Liquidators of*) v. *Coleman*, L. R. 6 H. L. 189; 42 L. J. Ch. 644; 29 L. T. 1; 21 W. R. 696.
(*m*) *Att.-Gen.* v. *Clarendon* (*Earl of*), 17 Ves. jun. 491.

party in each case, unless the first-mentioned party can show that no improper influence was exercised. In cases of this class a sub-purchaser is safe if he has no notice of any circumstance rendering the transaction voidable in equity; no requisition should, therefore, in general, be made in such cases, unless the proposed purchaser or mortgagee has any such notice.

Requisition.

It appears that [*here state relationship*]. *The concurrence of* [*the person on whose application the transaction is voidable*] *must be procured.*

FINES AND RECOVERIES.

Fines and recoveries were abolished in 1833 (*n*); but as titles still occasionally commence before the date of their abolition some account of them may be useful.

A common recovery was a contrivance for evading the Statute *De Donis* by a fictitious suit collusively prosecuted to judgment, by means of which a tenant in tail, provided that he was either seised of the land or obtained the concurrence of the person so seised, was enabled to bar his issue and all subsequent estates in remainder (*o*); and a statute of Geo. II. enacted that a recovery suffered without the concurrence of a lessee for life at a rent should be valid, provided the concurrence of the person next entitled to a freehold estate in remainder or reversion could be procured (*p*).

A fine was also a fictitious suit, but was terminated by agreement, under which the person suing was admitted to be the owner of the land. It was only binding against a tenant in tail and his issue, unless the tenant in tail was actually seised, when it was also binding on the remaindermen by tortious operation. In order to complete a fine, enrolment

(*n*) 3 & 4 Will. 4, c. 74.
(*o*) *Taltarum's Case*, Year Book, 12 Edw. 4, c. 19.
(*p*) 14 Geo. 2, c. 20, ss. 1, 2.

on the records of the Court and proclamations were required. All fines levied in the Court of Common Pleas are deemed to have been levied with proclamations (*q*).

If an estate tail was barred by fine only, the estate created was a mere base fee, and the land was liable, after the death of the tenant in tail and failure of his issue, to be recovered by the remainderman.

Prior to their being abolished, fines were much made use of for barring dower, and for that purpose they were effectual without proclamations; but separate examination of married women was necessary. A fine was also used on the conveyance of real property to which a man was entitled in right of his wife.

In practice the production of the recovery deed may now be accepted as sufficient evidence of a recovery. As regards a fine, the chirograph should be abstracted and produced, and, where proclamations were necessary, a memorandum duly indorsed thereon is sufficient proof. When the interest of a married woman is being dealt with, the abstract must also contain the certificate of her acknowledgment, as without such acknowledgment the fine would be ineffectual.

Requisitions.

1. *A. B., the tenant in tail in possession, who purported to convey by the indentures of lease and release of* , 1811, *covenanted to levy a fine in order to bar his estate tail. The abstract should show that such fine was duly levied, for which purpose the chirograph must be extracted and produced.*

2. *The fine levied by C. D., the tenant in tail in remainder, who conveyed by the indenture of* , 1830, *would only have the effect of barring the issue of the tenant in tail and not the remaindermen. Are the remaindermen now statute-barred? Evidence on the point should be produced, as, by reason of deaths under age of successive tenants in tail, it is possible that there might still be an enforceable claim.*

(*q*) 11 & 12 Vict. c. 70, s. 1.

FIRE.

See INSURANCE AGAINST FIRE.

FIXTURES.

All chattels fixed to the soil are regarded as a portion of the freehold, and as such they pass to the purchaser upon a conveyance, or to the devisee upon a devise of the land. Upon the death intestate of the owner in fee of land his heir-at-law is entitled to the fixtures (*r*). But as between tenant for life and remainderman, chattels affixed by the tenant for life for purposes of his trade do not become part of the freehold, and may be removed by his executor in the absence of evidence of a contrary intention (*s*).

In former times fixtures were irremovable by a lessor or other limited owner, but exceptions were, many years ago, made with regard to certain fixtures which such limited owners have attached to the freehold, and which are known as "tenants' fixtures." These comprise "trade fixtures," that is to say, articles attached to the freehold merely for the purposes of trade, and "ornamental fixtures," which are articles so attached for the purpose of ornament or domestic use. Such fixtures may be removed by a tenant or other limited owner attaching them, provided he can do so without damage to the freehold, and such removal must take place before his term or interest has expired.

The right of the tenant to remove trade fixtures prevails against a mortgagee of the landlord as well as against the landlord himself (*t*), and in the absence of express stipulation to the contrary, a mortgagor in possession has the right to permit trade fixtures to be put up and removed

(*r*) *Fisher* v. *Dixon*, 12 Cl. & F. 312.
(*s*) *Re Sir Edward Hulse*, *Beattie* v. *Hulse*, [1905] 1 Ch. 406; 74 L. J. Ch. 246; 92 L. T. 232.
(*t*) *Sanders* v. *Davis*, 15 Q. B. D. 218; 54 L. J. Q. B. 576; 33 W. R. 655.

from the mortgaged premises, provided they are removed before the mortgagee takes possession, but the right of removal ceases when possession is taken by the mortgagee (*u*).

Fixtures put up for the purpose of agriculture were held not to come within the category of trade fixtures, but by various statutes the law has been modified in favour of agricultural tenants. Since the 23rd July, 1851, if a tenant, with the consent in writing of the landlord for the time being, erects at his own expense for agricultural purposes, or for the purposes of trade and agriculture, any building, engines, or machinery, subject to the right of the landlord to purchase such fixtures, they become the tenant's property, and are removable by him on giving the landlord or his agent one calendar month's previous notice in writing of his intention to remove them (*x*).

A further modification of the law as regards agricultural fixtures was made by the Agricultural Holdings (England) Act, 1875 (*y*), which came into operation on the 14th February, 1876. This provision was repealed and re-enacted with slight alterations by the Agricultural Holdings (England) Acts, 1883 and 1900 (*z*). Under these statutes, which have now been repealed and re-enacted by the Agricultural Holdings Act, 1908 (*a*), an agricultural tenant may remove fixtures voluntarily attached or acquired by him to his holding after he has paid all rent owing by him, and satisfied all his other obligations in respect of his holding. He is bound to give a calendar month's notice to his landlord, and his right of removing the fixtures is subject to the landlord's right to purchase them. The Act of 1875 applied only to holdings of two acres at least, but there is no similar provision in the Act of 1908 (*a*) which applies to any parcel of land held by a tenant which is wholly agricultural or wholly pastoral, or in part agricultural and

(*u*) *Ellis* v. *Glover and Hobson, Ltd.*, [1908] 1 K. B. 388; 77 L. J. K. B. 251; 98 L. T. 110.
(*x*) 14 & 15 Vict. c. 25, s. 3.
(*y*) 38 & 39 Vict. c. 92, s. 53.
(*z*) 46 & 47 Vict. c. 61, s. 34; 63 & 64 Vict. c. 50, s. 4.
(*a*) 8 Edw. 7, c. 28, s. 21

as to the residue pastoral, or in whole or in part cultivated as a market garden; but the Act does not apply to any holding let to the tenant during the continuance in any office, appointment, or employment held under the landlord. There appears to be nothing to prevent a landlord and tenant from modifying by agreement the provisions of the Act with regard to fixtures.

The principles which govern the rights of a tenant to remove fixtures do not apply as between mortgagor and mortgagee, as between whom the question is whether having regard to the character of the article and the circumstances in each particular case, the article in question was intended to be annexed to the inheritance or to continue a mere chattel (*b*).

In order to make valid a mortgage of trade machinery with power to sever or sell apart from the land to which it is affixed it must be registered as a bill of sale (*c*), but mortgages of land do not by reason only of the fixtures being separately assigned or of power being given to sever them, require registration when they pass by the same deed as the land (*d*).

Where machinery was supplied on the hire purchase system to a lessee for a long term and fixed by bolts to the floor of premises subsequent to the date of a mortgage of the premises, it was held that though under the terms of such agreement the machinery was to remain the property of the person supplying it, it became nevertheless the property of the mortgagee (*e*); but the interest of the owners of the machinery in such a case has priority over that of a merely equitable mortgagee (*f*).

As to compensation to tenants for buildings erected by them, see AGRICULTURAL HOLDINGS.

(*b*) *Monti* v. *Barnes*, [1901] 1 K. B. 205; 70 L. J. K. B. 225; 83 L. T. 619; 49 W. R. 147.

(*c*) *Re Yates, Batcheldor* v. *Yates*, 38 Ch. D. 112; 57 L. J. Ch. 697; 59 L. T. 47.

(*d*) Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 7.

(*e*) *Reynolds* v. *Ashby*, [1903] 1 K. B. 87; 72 L. J. K. B. 51; 87 L. T. 640; 51 W. R. 405.

(*f*) *Re Samuel Allen & Sons, Ltd.*, [1907] 1 Ch. 575.

Requisitions.

1. *It is presumed that the purchaser is entitled to all the fixtures that are now on the premises.*

2. *Which (if any) of the ornamental fixtures upon the premises are the property of the present tenant?*

3. *Do all the trade fixtures now upon the premises belong to the present tenant, or were any, and which, on the premises at the time of the demise?*

FORECLOSURE.

Although the usual order for foreclosure provides that in default of payment by the time fixed the mortgagor is to stand absolutely foreclosed, yet it must be borne in mind that a further order is required before the foreclosure becomes absolute.

In the case of an equitable mortgage, the foreclosure order usually directs the mortgagor to convey the premises as the mortgagee shall direct. The purchaser of foreclosed property should see that the order has been complied with in this respect, or that a vesting order has been made (*h*).

In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, at the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property on such terms as it thinks proper, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(*h*) *Lechmere* v. *Clamp*, 30 L. J. Ch. 651; 32 L. J. Ch. 276; 7 L. T. 411; 9 W. R. 860; 11 W. R. 83; 1 N. R. 81; 30 Beav. 218; 31 Beav. 578.

The Court may direct such sale without previously determining the priorities of incumbrancers (*i*), and that upon an interlocutory application at any time before foreclosure absolute (*k*).

A foreclosure is proved by the production of the final foreclosure order : It operates to convey to the mortgagee the full beneficial interest which was subject to the mortgage. An order of the Court will not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of such want or not (*l*).

After foreclosure by trustees the property is held by them on trust for sale, but if the mortgage money was capital money arising under the Settled Land Acts, 1882-1890, the tenant for life may require the property to be conveyed to the uses of the settlement (*m*).

Requisitions.

1. *The vendor must at his own expense either* (1) *obtain an absolute order for foreclosure*, (2) *obtain a release from A. B. and his trustee of the equitable estate* [*or* (3) *satisfy the purchaser by a statutory declaration that the appointment on the day of , 19 , at the Royal Courts was attended by the plaintiff or an agent on his behalf with the usual power of attorney, and that no person attended on behalf of the defendant and that no part of the mortgage money has ever been paid.*]

2. *The mortgage to the mortgagee was only an equitable one, and, though it has been foreclosed, it does not appear that the legal estate has been got in. The mortgagor must be a party to the conveyance to convey the legal estate, or a vesting order must be obtained at the vendor's expense.*

(*i*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25.
(*k*) *Union Bank of London* v. *Ingram*, 20 Ch. D. 463 ; 51 L. J. Ch. 508 ; 46 L. T. 507 ; 30 W. R. 375.
(*l*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70.
(*m*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 9.

3. *The foreclosure order of the of 19 is only stamped with a 5s. stamp. It must be properly stamped as a conveyance.*

FORFEITURE.

See CONVICTS, TRAITORS AND FELONS—LEASEHOLD PROPERTY.

FREEBENCH.

See DOWER AND FREEBENCH.

FRIENDLY SOCIETIES.

The law relating to friendly societies has been consolidated by the Friendly Societies Act, 1896 (*n*), which, together with the Collecting Societies and Industrial Assurance Companies Act, 1896 (*o*), repeals and re-enacts the five Acts collectively called the Friendly Societies Acts, 1875 to 1895 (*p*).

All property belonging to a friendly society is vested in the trustees of the society for the time being. Upon the death, resignation, or removal of a trustee, the property, whether real or personal, vests in the surviving or continuing trustees without any conveyance or assignment, and upon the death of the last-surviving trustee, the property of the society vests in his legal personal representative (*q*). On the appointment, therefore, of new trustees, no transfer of the trust property is, in general, necessary (*r*).

(*n*) 59 & 60 Vict. c. 25.
(*o*) *Ibid.* c. 26.
(*p*) 38 & 39 Vict. c. 60; 50 & 51 Vict. c. 56; 52 & 53 Vict. c. 22; 56 & 57 Vict. c. 30; 58 & 59 Vict. c. 26.
(*q*) 38 & 39 Vict. c. 60, s. 16 (4); 59 & 60 Vict. c. 25, s. 50.
(*r*) *Morrison* v. *Glover*, 4 Ex. 430; 19 L. J. Ex. 20; 14 L. T. (O. S.) 204; 14 J. P. 84.

Stocks and securities in the public funds of Great Britain and Ireland must, however, be transferred into the names of the succeeding trustees in the usual manner (*s*).

A friendly society may (if its rules so provide) hold, purchase, or take on lease any land, and may sell, exchange, mortgage, lease, or build upon that land, and may alter and pull down buildings and again rebuild; and a purchaser, assignee, mortgagee, or tenant is not bound to inquire as to the authority for any sale, exchange, mortgage, or lease by the trustees, and the receipt of the trustees for any money arising from or in connection with such a sale, exchange, mortgage, or lease is a good discharge : a benevolent society, however, cannot hold land exceeding one acre in extent at any one time (*t*).

Friendly societies sometimes purchase lands in the names of their trustees, although there is no provision in their rules authorising them to do so. In this case it is conceived that the trustees can still make a title on sale, but it would be prudent not to rely upon the statutory devolution to new trustees which is effected automatically in the case of land purchased in accordance with the rules.

On a purchase of copyhold property, the lord of the manor is bound to admit not more than three trustees of the society on payment of the usual fines, fees, and other dues payable on the admission of a single tenant (*u*).

A receipt under the hands of the trustees of a friendly society or branch, countersigned by the secretary, for all sums of money secured to the society or branch by any mortgage or assurance, if indorsed upon or annexed to the mortgage, vacates the mortgage or other assurance and vests the property comprised in it in the person entitled to the equity of redemption without reconveyance or surrender (*x*). If the mortgage has been registered under any Act for the registration of title, or is of copyholds, or of lands of customary tenure and entered on any court rolls, the registrar under any such Act or steward of the

(*s*) See note (*f*), *supra*.
(*t*) 38 & 39 Vict. c. 60, s. 16 (2); 59 & 60 Vict. c. 25, s. 47.
(*u*) 38 & 39 Vict. c. 60, s. 16 (6); 59 & 60 Vict. c. 25, s. 48.
(*x*) 38 & 39 Vict. c. 60, s. 16 (7); 59 & 60 Vict. c. 25, s. 53 (1).

manor is bound, on the production of the receipt verified by oath of any person, to enter satisfaction of the mortgage on the register or court rolls and to grant a certificate either upon the mortgage or separately to the like effect (*y*), which certificate is evidence, without further proof, in all Courts and proceedings (*z*).

The proper evidence that a society is duly registered under one of the Acts is the acknowledgment of registry issued by the Chief Registrar of Friendly Societies (*a*) : a copy of the rules should be required to prove their contents.

Requisitions.

1. *A copy of the rules of the X. Friendly Society must be furnished, as also must the acknowledgment of registry under the Friendly Societies Acts. It must also be proved that A., B., C. and D. were trustees of the society at the time of the mortgage, and that A., B. and C. were the trustees at the time the indorsed receipt was given. When did D. cease to be a trustee of the society ?*

2. *The land sold is stated to contain one acre or thereabouts: it must be shown that it does not exceed one acre* (*b*).

FUTURE ESTATES.

See REVERSIONARY INTERESTS.

GARDENS, COTTAGE AND MARKET.

See AGRICULTURAL HOLDINGS.

(*y*) 38 & 39 Vict. c. 60, s. 16 (8); 59 & 60 Vict. c. 25, s. 53 (2).
(*z*) *Ibid.* s. 53 (3).
(*a*) 38 & 39 Vict. c. 60, s. 11 (10); 59 & 60 Vict. c. 25, s. 11.
(*b*) See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 47 (3).

GAVELKIND.

Tenure subject to the custom of gavelkind is principally met with in the county of Kent. In that county every interest in land is presumed to be held according to this tenure, and to displace this presumption it is necessary to show that the land was never so subject, or that it has been disgavelled by an Act of Parliament.

The most important peculiarities of gavelkind are—

(1) An infant who has attained the age of fifteen can convey by feoffment for value, and such conveyance is not liable to be avoided by the infant on his attaining the age of twenty-one (*c*).

(2) Birth of issue is not necessary to entitle a husband to an estate by curtesy in his wife's lands. The husband's estate by curtesy extends only to one moiety of his wife's lands, and ceases upon his marrying again.

(3) The wife's dower (commonly called freebench) extends to one moiety of her husband's lands, and lasts only during her widowhood, and while chaste, or, rather, having had no illegitimate child.

(4) All males inherit together as coparceners subject to the husband's curtesy or wife's dower. In other respects the descent of the estate is regulated by the same rules as apply to ordinary estates in fee simple. The issue of deceased males where their ancestor is dead take their ancestor's share as coparceners.

The Dower Act applies to dower under the custom of gavelkind (*d*). Under it a widow is entitled to dower where the interest of the husband was equitable as well as where it was legal (*e*), but not out of any lands absolutely disposed of by the husband in his lifetime (*f*), and her dower

(*c*) *Re Maskell and Goldfinch's Contract*, [1895] 2 Ch. 525; 64 L. J. Ch. 678; 72 L. T. 836; 43 W. R. 620; 13 R. 685.

(*d*) *Farley* v. *Bonham*, 30 L. J. Ch. 239; 3 L. T. 806; 9 W. R. 299; 7 Jur. (N. S.) 232; 2 J. & H. 177.

(*e*) The Dower Act, 1833 (3 & 4 Will. 4, c. 105), ss. 2, 3.

(*f*) *Ibid.* s. 4.

may be barred by declaration in deed or will (*g*), or by a devise showing a contrary intention (*h*).

See FEOFFMENTS.

Requisition.

As the land sold is in the county of Kent, it is presumed that it is subject to the custom of gavelkind. On the death of A. B. intestate and without leaving a widow, C. D., his eldest son, would be entitled to one-third only. E. F., the only daughter of A. B.'s second son, would be entitled to one other third, and G. H. and K. L., the two sons of A. B.'s third son, would be entitled to the remaining third of the property. E. F., G. H., and K. L. must join with C. D. in the conveyance to the purchaser. As K. L. is only eighteen years of age, he must convey his share by feoffment, and at least one-sixth of the purchase money must be paid to him personally.

GLEBE LANDS.

Glebe land—that is to say, land held by an incumbent to provide part of the revenue of an ecclesiastical benefice—may in certain cases, and subject to certain conditions, be sold and leased by the incumbent.

Thus a statute of 1838 gave power to an incumbent, with certain consents, to sell the residence if inconveniently situated, and under other special circumstances, together with the adjoining land (*i*) not exceeding twelve acres (*k*). And this provision was extended in the following year (*l*) to outlying lands; and further powers are given by the Glebe Lands Act, 1888 (*m*), with the approval of the

(*g*) The Dower Act, 1833 (3 & 4 Will. 4, c. 105), ss. 6, 7.
(*h*) *Ibid.* s. 9.
(*i*) 1 & 2 Vict. c. 23, s. 7 *et seq.*; 21 & 22 Vict. c. 57.
(*k*) 1 & 2 Vict. c. 29.
(*l*) 2 & 3 Vict. c. 49, s. 15.
(*m*) Glebe Lands Act, 1888 (51 & 52 Vict. c. 20).

Ministry of Agriculture. By other statutes power is given to exchange glebe lands (*n*).

Incumbents are also empowered by other statutes, with the consent of the bishop and patron, and under certain restrictions, to lease glebe lands for terms not exceeding fourteen years, and in particular cases twenty years (*o*); but the parsonage house and ten acres most conveniently situated for occupation are not to be leased. The Settled Land Acts do not apply to ecclesiastical property (*p*).

The statutes in question contain full provisions as to payment of purchase-money, rent, and other matters, and they and the Rules thereunder for the time being should be referred to on the comparatively rare occasions when a conveyancer has to deal with a title depending upon any of them.

Requisition.

How is it proposed to prove that the necessary consents were given to the sale of the field formerly forming part of the glebe land of St. Mary's Vicarage?

GRANT.

A deed of grant was at common law the appropriate mode of conveying incorporeal hereditaments; but corporeal hereditaments, that is, freehold estates in possession, could not be so conveyed. After the 30th September, 1845, all corporeal tenements and hereditaments have been deemed to lie in grant as well as livery (*q*), and consequently have been capable of being transferred by deed of grant.

The word "grant" implies covenants for title in a conveyance by companies under the Lands Clauses Consolida-

(*n*) 5 & 6 Vict. c. 54, s. 5; 9 & 10 Vict. c. 73, s. 22; 23 & 24 Vict. c 93, s. 41.

(*o*) 5 & 6 Vict. c. 27; 5 & 6 Vict. c. 108; 21 & 22 Vict. c. 57; 25 & 26 Vict. c. 52; 28 & 29 Vict. c. 57.

(*p*) *Ex parte Bishop of Bath and Wells*, [1899] 2 Ch. 138; 68 L. J. Ch. 524; 81 L. T. 69.

(*q*) The Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 2.

tion Act, 1845 (*r*), and in conveyances to the Governors of Queen Anne's Bounty (*s*).

See CONVEYANCES.

GROUND RENTS.

What is commonly referred to as a ground rent or an improved ground rent is merely a freehold or leasehold interest, subject to a lease or underlease on the grant of which the ground rent or improved ground rent has been reserved. The lease or underlease should in all cases be abstracted, and the counterpart handed over to the purchaser on completion.

The Reversion Duty, which was imposed by the Finance (1909-10) Act, 1910 (*t*), has been abolished *ab initio*, and a purchaser is consequently no longer concerned with it.

Requisitions.

1. *Who is at present entitled to the leasehold interest on the property on which the ground rent is secured?*

2. *The counterpart of the lease will, it is presumed, be handed over to the purchaser on completion.*

3. *What right had the trustees of the settlement of , 19 , to purchase these ground rents? The power of sale of the property originally settled provides for the purchase out of the proceeds of "other hereditaments in possession." Is it contended that these words include freehold ground rents?*

HABENDUM.

See DEEDS.

(*r*) 8 & 9 Vict. c. 18, s. 132.
(*s*) Queen Anne's Bounty Act, 1838 (1 & 2 Vict. c. 20), s. 22.
(*t*) 10 Edw. 7, c. 8, s. 13.

HEIRS.

See ENTAIL—FEE SIMPLE.

HUSBAND.

See CURTESY—MARRIED WOMEN.

HUSBAND AND WIFE.

See CONVEYANCES—MARRIED WOMEN.

IDENTITY.

It is not usual to insist upon proof of the identity of persons named in certificates of birth, marriage, or death, but it is conceived that strictly the purchaser is in all cases entitled at his own expense to a statutory declaration by a person well acquainted with the family, identifying such persons. The same observation applies to the identity of persons named in instruments such as deeds and wills, but as in these cases an address and description is usually added, the purchaser need rarely require any further evidence beyond the instruments themselves.

Requisitions.

1. *Is the James Smith mentioned in the underlease of* 19 , *and in the assignment of* 19 , *the same person as Charles James Smith, the testator? Evidence of identity explaining the discrepancy must be furnished.*

2. *On page of the abstract the name of the second child of Mr. and Mrs. M. is stated as Elizabeth Grace, whereas the name of Mrs. F., through whom the title is derived, is given as Grace Elizabeth. This dis-*

crepancy must be explained and evidence of identity given.

3. *The death certificates of John William X., the uncle, and of John William X., the nephew, must both be produced, and, having regard to the fact that both uncle and nephew bear the same name, there should be a statutory declaration by some person well acquainted with the family identifying the persons named in the certificates with the uncle and nephew respectively.*

IDIOTS.

See INSANITY.

IMPLIED COVENANTS.

See COVENANTS.

IMPROVEMENTS.

See LAND IMPROVEMENT ACTS.

INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

As the title to land awarded on an inclosure under the Inclosure Act, 1845, depends upon the title to the land in respect of which the award is made (*u*), an abstract of the latter title must be furnished to a purchaser.

Inclosure awards are proved either by a copy signed by a proper officer of the Court if the enrolment has been made

(*u*) The Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 94.

in the High Court, or by a copy signed by the clerk of the peace of the county if it has been made with the clerk of the peace (*x*).

The Inclosure Act contains provisions whereby an exchange may be effected. This exchange is effectual for all purposes, and is not liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application the same has been made, and the land taken upon such exchange is held upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the lands given on such exchange would have stood limited to or been subject to in case such exchange had not been made (*y*). A common law exchange has the same effect, but in modern practice exchanges are carried out by mutual conveyances.

A sealed copy of the award which is delivered to each of the parties on whose application an exchange was made ought to be handed over to a purchaser.

Since the 3rd September, 1848, a partition may be obtained under the provisions of the Inclosure Acts on the application of persons interested. Such partitions are effectual for all purposes, and like exchanges are not liable to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application they have been made. The land allotted in severalty upon every such partition enures to, for, and upon the same uses, trusts, intents, and purposes, and subject to the same conditions, charges, and incumbrances, as the undivided part or share in respect of which the same is allotted would have stood limited or been subject to in case the partition order had not been made (*z*).

A partition order under the Inclosure Acts is proved by a sealed copy of the award, which is delivered to each of the parties on whose application the partition was made (*a*).

(*x*) 41 Geo. 3, c. 109, s. 35; 3 & 4 Will. 4, c. 87, s. 2.
(*y*) The Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 147.
(*z*) 8 & 9 Vict. c. 118, s. 147; 11 & 12 Vict. c. 99, ss. 13, 14.
(*a*) 8 & 9 Vict. c. 118, s. 147; 11 & 12 Vict. c. 99, s. 14.

Requisitions.

1. *An abstract of the title to the land by virtue of his estate in which the property sold was allotted to the vendor under the inclosure award of* 18 , *must be furnished.*

2. *The vendor must at his own expense adduce evidence proving that the award offered as the root of title was made on the application of the persons interested in the land within the meaning of the Inclosure Act*, 1848, *s.* 13 (*b*).

3. *As the exchange of* 19 , *was effected under sect.* 147 *of the Inclosure Act*, 1845, *the title of the land given in exchange must be deduced. The title of the land taken prior to the exchange is immaterial.*

4. *The purchaser will require to be satisfied as to the regularity of the award. What evidence can the vendor produce to show that the formalities required by the Inclosure Acts have been carried out?*

INFANTS.

An infant cannot—

(i) Make a conveyance or contract (*c*) which is not voidable on attaining his majority, or on death, except—
  (1) Under a custom, such as in the case of the conveyance of gavelkind lands by feoffment;
  (2) Under a statutory power, such as the Infant Settlements Act (*d*), whereby a male infant of twenty and a female of seventeen can, with the sanction of the Court, make a binding settlement on marriage;
  (3) Where lands have descended or been devised to an infant and it is necessary that they should be

(*b*) See *Jacomb* v. *Turner*, [1892] 1 Q. B. 47.
(*c*) *Duncan* v. *Dixon*, 44 Ch. D. 211; 59 L. J. Ch. 437; 62 L. T. 319; 38 W. R. 700.
(*d*) 18 & 19 Vict. c. 43.

sold or mortgaged for payment of debts, the infant can convey under the direction of the Court for the purpose of making a title (*e*).

(ii) Exercise over real estate a power coupled with an interest in himself; as regards personal estate, however, he can do so even when coupled with an interest, where an intention appears that the power should be exercisable during minority (*f*). He can exercise a power not so coupled.

(iii) Make a will (*g*); unless he is a soldier in actual military service of a mariner at sea (*h*).

(iv) Give a valid receipt for purchase-money.

An infant of fifteen can, however, convey by feoffment with livery of seisin, *propria manu*, his gavelkind land, but he must have valuable consideration (*i*).

The freehold or leasehold property of an infant may be sold under the provisions of the Settled Estates Act, 1877 (*k*), and under the Settled Land Act, 1882 (*l*); and where the infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life under the Settled Land Act, 1882, the powers of a tenant for life are exercisable on his behalf by the trustees of the settlement, or, if none, by such person as the Court orders (*m*). Where a person seised or entitled in possession is an infant he is deemed tenant for life for the purposes of the Settled Land Acts (*n*).

When the person entitled to possession of land is an infant, and, being a woman, also unmarried, the trustees for the

(*e*) 11 Geo. 4 & 1 Will. 4, c. 47, s. 11; 11 Geo. 4 & 1 Will. 4, c. 65, ss. 12, 16, 31; 2 & 3 Vict. c. 60; 11 & 12 Vict. c. 87.

(*f*) *Re Cardross*, 7 Ch. D. 728; 47 L. J. Ch. 327; 38 L. T. 778; 26 W. R. 389; *Re D'Angibau, Andrews* v. *Andrews*, 15 Ch. D. 228; 49 L. J. Ch. 756; 43 L. T. 135; 28 W. R. 930.

(*g*) 7 Will. 4 & 1 Vict. c. 26, s. 7.

(*h*) *Ibid.* s. 11, and the Wills (Soldiers and Sailors) Act, 1918 (7 & 8 Geo. 5, c. 58), s. 1.

(*i*) Bacon's Abridgment, Vol. 4, 7th edit., p. 49; *Re Maskell and Goldfinch's Contract*, [1895] 2 Ch. 525; 64 L. J. Ch. 678; 72 L. T. 836; 43 W. R. 620; 13 R. 685.

(*k*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18); Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 41.

(*l*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59, 60.

(*m*) *Ibid.* s. 60.

(*n*) *Ibid.* s. 59.

purpose appointed by the settlement, if any, or the persons trustees of the settlement with power of sale, or trustees appointed by the Court for the purpose, may enter into possession and manage or superintend the management of the land with full power to fell timber and cut underwood, pull down, rebuild, and repair houses and other buildings, and to continue the working of mines, minerals and quarries, and to drain and otherwise improve land, insure against fire, make arrangements with tenants, accept surrenders of leases and tenancies, and generally deal with the land in due course of management, but the trustees can only cut timber on the same terms as the infant could if of full age (*o*).

See AGENTS—SETTLED LAND—VESTING DECLARATIONS AND ORDERS.

Requisitions.

1. *Upon what basis was the purchase-money apportioned on the feoffments referred to in the abstract? The land being gavelkind, the brothers were entitled as coparceners. Why does the infant brother receive less than a moiety of the purchase-money?*

2. *It would appear from the abstracted marriage settlement of his father and mother that the intended mortgagor is not yet of age. How is it proposed to make a title?*

INSANITY.

A conveyance by a person of unsound mind is void if voluntary or made to a person with notice of the unsoundness of mind; but conveyances by fine or recovery and feoffments, at all events before the 1st January, 1845 (*p*), were exceptions (*q*).

(*o*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 42.
(*p*) 7 & 8 Vict. c. 76, s. 7; 8 & 9 Vict. c. 106, s. 4.
(*q*) Burton, ss. 195, 196.

Although the law is by no means clear on the subject, the result of the authorities appears to be that a conveyance for valuable consideration to a purchaser without notice of the unsoundness of mind is not void, but is voidable at the option of the person of unsound mind or his representatives, provided that the parties can be restored to their original position (*r*). It has been held that the Court will not interfere to set aside a contract made with a person who turns out to have been of unsound mind at the time, if it is fair and reasonable and was made without notice of the unsoundness, especially where the parties cannot be reinstated (*s*). Indeed, it seems doubtful whether a contract entered into under such circumstances and completely executed will be set aside on any ground short of fraud, and in the Irish Courts it has been held that it will not (*t*). There seems no doubt that the Court would at least refuse under such circumstances to order specific performance of an agreement which was wholly executory.

Where a person has become insane it must, in order to make his will valid, be shown that at the time of making it he was of sound and disposing mind, memory, and understanding. Partial unsoundness not affecting the general faculties, and not operating on the mind of a testator in regard to testamentary disposition, is not sufficient to render a person incapable of disposing of his property by will (*u*).

The judge in Lunacy may order any property of the following persons to be sold, charged, mortgaged, dealt with, or disposed of for raising or securing money to be applied for all or any of the purposes mentioned hereunder. The persons referred to are :—

(1) Lunatics so found by inquisition.

(2) Lunatics not so found, for the protection or adminis-

(*r*) *Molton* v. *Camroux*, 4 Ex. 17; 18 L. J. Ex. 68; 12 Jur. 800; *Elliott* v. *Ince*, 7 De G. M. & G. 475; 26 L. J. Ch. 821; 30 L. T. (O. S.) 92; 5 W. R. 465; 3 Jur. (N. S.) 597.

(*s*) *Niell* v. *Morley*, 9 Ves. jun. 478.

(*t*) *Hassard* v. *Smith*, 6 Ir. Eq. R. 429.

(*u*) *Banks* v. *Goodfellow*, L. R. 5 Q. B. 549; 39 L. J. Q. B. 237; 22 L. T. 813.

tration of whose property any order had been made prior to the 1st May, 1890.

(3) Persons lawfully detained as lunatics though not so found by inquisition.

(4) Persons not being within (1) or (2) incapable through mental infirmity, arising from disease or age, of managing their affairs.

(5) Persons proved by the certificate of a master in Lunacy or by a report of the Commissioners to be of unsound mind or incapable of managing their affairs, and also as to whom it is so proved that their property does not exceed 2,000*l.* in value, or that the income does not exceed 100*l.* a year.

(6) Defectives within the meaning of the Mental Deficiency Act, 1913 (*x*).

(7) Criminal lunatics continuing to be insane and in confinement (*y*).

The purposes for which the property can be so sold, mortgaged, or dealt with are for raising, or securing, or repaying, with or without interest, money which is to be, or which has been, applied to all or any of the purposes following :—

(1) Payment of such person's debts or engagements.

(2) Discharge of any incumbrance on his property.

(3) Payment of any debt or expenditure incurred for his maintenance, or otherwise for his benefit.

(4) Payment of, or provision for, the expense of his future maintenance (*z*).

The judge may in the case of a lunatic authorise the committee of the estate, and, in case of the above-mentioned persons not so found by inquisition, such persons as the judge may direct, amongst other things, to do the following acts respecting the lunatic's or other person's property :—

(1) Sell.

(2) Make exchange or partition, and give or receive money for equality.

(*x*) 3 & 4 Geo. 5, c. 28.
(*y*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 116.
(*z*) *Ibid.* s. 117.

(3) Grant leases, including building, agricultural, and mining leases, and accept a surrender of a lease.
(4) Surrender any lease and accept a new lease.
(5) Execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends.
(6) Perform any contract relating to his property entered into by the lunatic before his lunacy.
(7) Surrender, assign, or otherwise dispose of onerous property.
(8) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit, or the power of consent is in the nature of a beneficial interest in the lunatic (*a*).

The committee of a lunatic may by leave of the judge take proceedings or give any necessary consent to have the lunatic made bankrupt (*b*).

The committee of a lunatic so found, or the person appointed by the Court in the case of a person of unsound mind not so found, is expressed to convey as such, and the covenants implied under the Conveyancing Act by his so conveying are the same as those implied in the case of a trustee (*c*).

The committee of a lunatic may act on his behalf for the purposes of the Settled Estates Act, 1877 (*d*), and the Settled Land Act, 1882, provides that where a tenant for life, or a person having the powers of a tenant for life under the Act, is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf under an order in lunacy, exercise the powers of a tenant for life under the Act; the order may be made on the petition of any person interested in the settled land or of the committee of the estate (*e*).

(*a*) 53 & 54 Vict. c. 5, ss. 116 (2), 120.
(*b*) *Ex parte Cahen, Re Cahen*, 10 Ch. D. 183; 39 L. T. 645; 27 W. R. 387; see Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 148; Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 149.
(*c*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7 (1), (F).
(*d*) 40 & 41 Vict. c. 18, s. 49. (*e*) Settled Land Act, 1882, s. 62.

A person may be empowered to exercise on behalf of a person of unsound mind not so found powers given to the last-mentioned person by a settlement (*f*); but when a person of unsound mind not so found by inquisition is tenant for life, he must be found a lunatic by inquisition and a committee be appointed before the powers of a tenant for life under the Settled Land Acts can be exercised or the consent required by section 56 of the Act of 1882 can be given on his behalf (*g*). The powers of leasing vested in a lunatic not so found may, however, be exercised by the committee under section 116 of the Lunacy Act, 1890 (*h*). If, however, the alleged lunatic is an infant, the Court retains its ordinary jurisdiction notwithstanding his mental disability (*i*); consequently the provisions of the Settled Land Act relating to infants (*k*) apply.

Notice must be served upon the trustees in the case of a lunatic as well as any other tenant for life, and, if necessary, trustees for the purposes of the Act must be appointed (*l*); but the committee of a lunatic tenant for life cannot give a valid notice for the purpose unless he has previously obtained authority from the Court in Lunacy to do so (*m*).

The Court in Lunacy will not, by sanctioning any sale, purchase, or enfranchisement, alter the rights of succession to the lunatic's property (*n*).

Notwithstanding the incompetency of a person of unsound mind not so found, the Court under its ordinary equitable

(*f*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116, 120, and 128; *Re X.*, [1894] 2 Ch. 415; 63 L. J. Ch. 613; 71 L. T. 139; 42 W. R. 657; 7 R. 365.

(*g*) *Re Baggs*, [1894] 2 Ch. 416, n.; 96 L. T. Journ. 198; *Re De Moleyns and Harris' Contract*, [1908] 1 Ch. 110; 77 L. J. Ch. 9; 97 L. T. 630.

(*h*) *Re Salt*, [1896] 1 Ch. 117; 65 L. J. Ch. 152; 73 L. T. 598; 44 W. R. 146.

(*i*) *Beall* v. *Smith*, L. R. 9 Ch. 85, at p. 92; 43 L. J. Ch. 245; 29 L. T. 625; 22 W. R. 121; *Re Edwards*, 10 Ch. D. 605; 48 L. J. Ch. 233; 40 L. T. 113; 27 W. R. 611.

(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59 and 60.

(*l*) *Re Taylor*, 52 L. J. Ch. 728; 49 L. T. 420; 31 W. R. 596; W. N. (1883) 95.

(*m*) *Re Ray's Settled Estates*, 25 Ch. D. 464; 53 L. J. Ch. 205; 50 L. T. 80; 32 W. R. 458.

(*n*) *Re Barker*, 17 Ch. D. 241; 50 L. J. Ch. 334; 44 L. T. 33; 29 W. R. 873; *Re Ryder*, 20 Ch. D. 514; 51 L. J. Ch. 401; 46 L. T. 336; 30 W. R. 417.

jurisdiction can and will bind the equitable interests of lunatics not so found when it appears to be for their benefit (*o*).

Where the protector of a settlement is a lunatic, whether so found or not, the Lord Chancellor, or other person or persons entrusted with the care and commitment of the persons and estates of lunatics, is protector in lieu of the lunatic (*p*).

Where a trustee, either original or substituted, is a lunatic or incapable of acting, the person or persons nominated for the purpose of appointing new trustees, or, if there are no such persons able and willing to act, then the continuing trustees or trustee may appoint another person or persons to be a trustee or trustees in the place of the trustee being lunatic or incapable (*q*), and the property may be vested by declaration in accordance with the Trustee Act, 1893.

Notwithstanding these provisions, it is still occasionally necessary to apply to the Court for the appointment of a new trustee to take the place of one become incapable. If the incapacity arises from physical and not from mental infirmity, the matter is within the jurisdiction of the Chancery Division of the High Court and not of the judge in Lunacy (*r*). The High Court as well as the judge in Lunacy (*s*) has jurisdiction to appoint a new trustee in the place, not only of a lunatic so found, but also of one not so found; but it has not power in the last case to make a vesting order, for which resort must be had to the judge in Lunacy (*t*).

Where a lunatic is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the judge in Lunacy may by order vest such land in such person or persons for such estate and in such manner as he directs, or may appoint a person to convey, and may release any land

(*o*) *Wilder* v. *Pigott*, 22 Ch. D. 263, at p. 269; 52 L. J. Ch. 141; 48 L. T. 112; 31 W. R. 377.
(*p*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 33.
(*q*) The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (1); *Re Lemann's Trusts*, 22 Ch. D. 633; 52 L. J. Ch. 560; 48 L. T. 389; 31 W. R. 520.
(*r*) *Re Barber*, 39 Ch. D. 187; 57 L. J. Ch. 756; 37 W. R. 182.
(*s*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 135, 141.
(*t*) *Re M.*, [1899] 1 Ch. 79; 68 L. J. Ch. 86; 47 W. R. 267.

from any contingent right to which the lunatic is entitled, and appoint a person to convey the land or release such right (*u*).

See EASEMENTS AND PROFITS À PRENDRE—LIMITATION, STATUTES OF.

Requisitions.

1. *A. B. is understood to have been found by inquisition since the settlement of the last to be a lunatic. Unless the vendor can satisfy the purchaser, either* (a) *that A. B. was not of unsound mind at the date of the settlement, or* (b) *that there was a sufficient consideration for the settlement, and that he (the vendor) had no notice or reason to believe that the settlor was of unsound mind at the time, the vendor must obtain the concurrence of the committee of the lunatic. Failing this, the purchaser will decline to complete.*

2. *The tenant for life is stated to be of unsound mind. Has he been so found by inquisition? If not, there appears to be no means by which a title can be made under the Settled Land Acts, unless he is first found lunatic.*

3. *The order of the Court in Lunacy giving leave to the committee of C. D. to give notice under sect. 45 of the Settled Land Act, 1882, should be abstracted and must be produced.*

INSURANCE AGAINST FIRE.

Where after the date of the contract a fire occurs upon property contracted to be sold, the purchaser will have to bear the loss (*x*). The only safe course for a purchaser to pursue is, therefore, at once, on entering into his contract, to insure the premises against fire, for although if the

(*u*) 13 & 14 Vict. c. 60, ss. 3, 4; Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 135.

(*x*) *Paine* v. *Mellor*, 6 Ves. jun. 349; 5 R. R. 327.

vendor has insured, the purchaser could probably before payment by the insurance company compel them to expend the money in rebuilding (*y*), after payment the vendor cannot be called upon to pay it over to the purchaser (*z*), unless, of course, he has agreed to do so; but if the vendor receives the insurance money and also the purchase-money without abatement in respect of the damage by fire, the insurers can recover from him a sum equal to the insurance money (*a*).

A mortgagee has power to insure where the deed contains no declaration to the contrary, and no insurance is kept up by the mortgagor in accordance with it.

The amount of such insurance must not exceed the amount specified in the mortgage deed, or if no amount is specified two-thirds of the amount required to restore the property in case of total destruction (*b*).

It is provided by section 83 of the Fires Prevention (Metropolis) Act, 1774 (*c*), that upon the request of any person interested in any house or other building insured which is burnt down or damaged by fire, the insurance company shall cause the insurance money to be laid out in rebuilding or repairing, and this provision has been held not to be confined to premises in the metropolis (*d*); but without prejudice to this (*e*) or any other obligation by law, or contract to the contrary, a mortgagee may require it to be applied towards the mortgage debt (*f*).

Where leasehold property is settled by a will the tenant for life is, in the absence of a contrary intention shown by such will, liable to pay the premiums on insurance against fire kept up in accordance with covenant in the lease. A tenant for life of furniture is, however, not liable to insure

(*y*) 14 Geo. 3, c. 78.
(*z*) *Rayner* v. *Preston*, 18 Ch. D. 1; 50 L. J. Ch. 472; 44 L. T. 787; 29 W. R. 547; 45 J. P. 829.
(*a*) *Castellain* v. *Preston*, 11 Q. B. D. 380; 52 L. J. Q. B. 366; 49 L. T. 29; 31 W. R. 557.
(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 19 (ii), 23.
(*c*) 14 Geo. 3, c. 78.
(*d*) *Re Quicke's Trusts*, *Poltimore* v. *Quicke*, [1908] 1 Ch. 887; 77 L. J. Ch. 523; 98 L. T. 610.
(*e*) 14 Geo. 3, c. 78, s. 83.
(*f*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 19 (ii), 23.

it; but the trustees should do so, and pay the premiums out of the estate (*g*). Sect. 18 of the Trustee Act, 1893 (*h*), does not alter the incidence of the expense of insurance as between tenant for life and remainderman (*i*).

Where the person entitled to possession of land is an infant and also unmarried, the trustees for the purposes of sect. 42 of the Conveyancing Act, 1881, may insure, and an infant tenant for life is not entitled to any charge on the *corpus* for the money expended on premiums (*k*).

Requisition.

Is the property insured against fire? and, if so, in what office and for what sum, and when does the policy expire? It is presumed that, pending completion, the vendor is willing to hold any existing policy in trust for the purchaser.

INTERLINEATIONS.

See DEEDS—WILLS.

INTESTACY.

Formerly upon an intestacy the intestate's fee simple estates, subject to the widow's right to dower or the husband's right to curtesy, descended to the heir of the last purchaser; but now the Land Transfer Act, 1897, provides that the legal estate in all real property (other than copyholds) vested in any person without a right in any other person to take by survivorship, is on his death, after the 31st December, 1897, to devolve to and become vested

(*g*) *Re Betty*, [1899] 1 Ch. 821, at p. 829; 68 L. J. Ch. 435.
(*h*) 56 & 57 Vict. c. 53.
(*i*) *Re Baring, Jeune* v. *Baring*, [1893] 1 Ch. 61, at p. 65; 62 L. J. Ch. 50; 67 L. T. 702; 41 W. R. 87; 3 R. 37.
(*k*) *Re Quicke's Trusts, Poltimore* v. *Quicke*, [1908] 1 Ch. 887; 77 L. J. Ch. 523; 98 L. T. 610.

in his legal personal representative as if it were a chattel real (*l*), who holds it for the persons beneficially entitled, and such persons have the same power of requiring a conveyance as persons entitled to personal estate have of requiring an assignment (*m*); and the legal personal representative may convey accordingly (*n*), but inasmuch as the Act does not bind the Crown, the legal estate in escheated land does not in this case vest in the administrator (*o*).

The intestate's fee tail estates, subject to the widow's right to dower or the husband's right to curtesy, descend to the heir of the body of the donee in tail. It seems doubtful whether the provisions of the Land Transfer Act, referred to above, apply to estates tail; probably they will be held not to do so.

The intestate's estates *pur autre vie* (subject to the provisions of the Land Transfer Act, 1897), devolve upon the heir of the *cestuis que vie*, if named, as special occupant. If the heir be not named as special occupant, such estates devolve upon the intestate's legal personal representatives.

The intestate's copyhold and customary property of which he was tenant on the rolls devolves upon his customary heir, and his personal property upon his administrator, or, where he has appointed an executor but not disposed of the property in question, upon his executor.

Letters of administration are usually accepted as sufficient evidence that a deceased person died intestate; but, as in the case of a testator dying before the 1st January, 1898, it was not necessary that a will of realty should be proved, there is a slight risk in accepting such evidence of intestacy, which may, however, in practice be disregarded.

When letters of administration have not been taken out, proof that the deceased died without a will is afforded by a statutory declaration that a proper search for a will has been made and that no will has been found, and this, coupled with a search at the probate registry showing that no will

(*l*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (1).
(*m*) *Ibid.* s. 2 (1).
(*n*) *Ibid.* s. 3 (1).
(*o*) *In the goods of Hartley*, [1899] P. 40; 68 L. J. P. 16; 47 W. R. 287.

has been proved, may be considered sufficient when such evidence is required.

The rights of persons claiming personal estate under an intestacy are not barred until 20 years have elapsed (*p*), as the Real Property Limitation Act, 1874 (*q*), does not apply.

Requisitions.

1. *It must be proved that A. B. died intestate. Letters of administration of his estate should be produced.*

2. *As letters of administration have not been granted of the estate of the deceased, a statutory declaration as to his intestacy must be supplied to the purchaser.*

3. *On the death of C. D., deceased, the leasehold property devolved on his administrator, who does not appear to have assigned to the vendor as next of kin. The concurrence of the administrator in the assignment to the purchaser must be obtained.*

4. *The property, though freehold, is vested by the Land Transfer Act, 1897, in the administrator of A. B., deceased, and he must join in the conveyance to the purchaser.*

INTESTATES' ESTATES ACT, 1890, CHARGES UNDER.

The Intestates' Estates Act provides that the real and personal estates of every man who dies intestate after the 1st September, 1890, leaving a widow, but no issue, shall, in all cases where the value of such real and personal estates shall not exceed 500*l.*, belong to his widow absolutely and exclusively (*r*) and where the net value of such real and personal estates shall exceed 500*l.*, the widow of such intes-

(*p*) 23 & 24 Vict. c. 38, s. 13.
(*q*) 37 & 38 Vict. c. 57.
(*r*) 53 & 54 Vict. c. 29, s. 1.

tate shall be entitled to 500*l.* part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal estates for such 500*l.* and interest at 4 per cent. (*s*).

This being so, it is necessary in cases where, after the date referred to above, the owner of an estate has died intestate without issue, and title is being made to his property, to require the release by the widow of her charge as well as of her dower, if any exists. The value for the purposes of the Act is twenty years' purchase of the annual value at the death of the intestate as fixed for the purposes of the income tax, less the gross amount of any mortgage and the value of any annuity (*t*). The Act does not apply to cases of partial intestacy (*u*); but it does apply to cases of complete failure of all the beneficial interest under a will, when the executor has predeceased the testator (*x*).

Requisition.

What was the value of the real and personal estate of the intestate, A. B. ? Mrs. B. must join in the conveyance in order to release her charge.

ISSUE.

The word "issue" includes descendants of every degree, and is not confined to children (*y*), but when there is found a gift to a person, and then a gift to the issue of that person, such issue to take the parent's share, the word "issue" may be restricted to children (*z*), and this applies to a deed as well as a will (*a*).

(*s*) 53 & 54 Vict. c. 29, s. 2.
(*t*) *Ibid.* s. 3.
(*u*) *Re Twigg's Estate, Twigg* v. *Black*, [1892] 1 Ch. 579; 61 L. J. Ch. 444; 66 L. T. 604; 40 W. R. 297.
(*x*) *Re Cuffe, Fooks* v. *Cuffe*, [1908] 2 Ch. 500; 77 L. J. Ch. 776; 99 L. T. 267.
(*y*) *Davenport* v. *Hanbury*, 3 Ves. jun. 257; 3 R. R. 91.
(*z*) *Sibley* v. *Perry*, 7 Ves. jun. 522; 6 R. R. 183.
(*a*) *Pruen* v. *Osborne*, 11 Sim. 132, at p. 138.

On the hearing of a case before the Court of Appeal in 1879, James, L.J., pointed out some curious consequences of the rule, and in the same case Brett, L.J., said : " I think after the way in which *Sibley* v. *Perry* has been spoken of in subsequent decisions, we are not at liberty to say that it does not lay down a general rule. But I think the fate of that general rule will be the fate which usually accompanies a rule which is not liked, namely, that it will be applied to cases exactly like *Sibley* v. *Perry*, and to no others ; or, in other words, it will be no general rule at all—and after hearing what the effect of such a general rule may be as described by James, L.J., I should have no objection to be present at the funeral of *Sibley* v. *Perry* " (*b*).

In gifts by will of real estate, the word " issue " is often held to be a word of limitation and not of purchase. Thus, such a gift to A. for life, and after his decease to his issue, gives to A. an estate tail (*c*); and before 1838 this construction was held to apply, notwithstanding that the gift to the issue contained words of distribution indicating that the issue were to take concurrently, such as " equally," " share and share alike," or " as tenants in common " ; but words of distribution indicating that the issue are to take concurrently are sufficient indication in wills made or republished on or after the 1st January, 1838, that the issue are to take by purchase (*d*). The construction treating " issue " as a word of limitation has no application to personal estate (*e*).

Where a person is entitled to land for an estate in fee or for life or for a term of years absolute or determinable on life with an executory limitation over on default or failure of all or any of his issue, such limitation is incapable of taking effect if and as soon as there is living any issue of

(*b*) *Ralph* v. *Carrick*, 11 Ch. D. 873; 48 L. J. Ch. 801; 40 L. T. 505.
(*c*) *Roddy* v. *Fitzgerald*, 6 H. L. C. 823.
(*d*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 29; *Montgomery* v. *Montgomery*, 3 Jo. & Lat. 47; 8 Ir. Eq. R. 740; *Crozier* v. *Crozier*, 3 D. & War. 353; 2 Con. & L. 309; 5 Ir. Eq. R. 415.
(*e*) *Knight* v. *Ellis*, 2 Bro. C. C. 570.

the age of twenty-one of the class on default or failure of which the limitation would have taken effect (*f*).

Requisitions.

1. *It appears from the abstract that the proposed mortgagors are the three children of A. B., deceased, who survived him. A statutory declaration must be supplied showing that there were at the time of the testator's decease no issue of any other of his children in existence.*

2. *Under the bequest of the leaseholds to A. for life and after his decease to his issue, it would seem that all the issue of A. living at the testator's death are entitled as joint tenants, and issue born subsequently, but before the death of A., would be admitted along with them. A proper pedigree must be furnished to the purchaser in order to enable him to be advised on the point.*

JOINT ACCOUNT CLAUSE.

See MORTGAGES.

JOINT STOCK COMPANIES.

See COMPANIES REGISTERED UNDER THE COMPANIES ACTS.

JOINT TENANTS.

A joint tenancy is that form of ownership which is created by a limitation in a deed or will to two or more persons either expressly as joint tenants or without indicating what kind of joint interests they are to take. All joint tenants are equally interested in the property limited to

(*f*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 10.

them, and on the decease of any of them without severing his undivided share, that share survives to the remaining joint tenants or tenant notwithstanding any disposition the deceased joint tenant may have made by will. There is no curtesy or dower in an estate held in joint tenancy.

A joint tenancy in fee simple may be created by deed by a grant to A. and B. and their heirs, or, since the 31st December, 1881, by a grant to A. and B. in fee simple (*g*); and, since the 31st December, 1837, a gift by will of real estate to A. and B. is sufficient to create a joint tenancy in fee (*h*).

A joint tenancy in tail special may be created by gift to A. B., and the heirs of their bodies, if A. and B. are persons who can possibly intermarry (*i*); but such a gift to more than two persons, or to two persons who cannot intermarry, will make them tenants in common in tail subject to the joint life estate (*k*).

A mistake which is sometimes made by persons intending to limit estates in joint tenancy is to devise them to several persons, such as A. and B., and the survivor of them, and the heirs of such survivor. Such a limitation gives to A. and B. joint life estates with a contingent remainder in fee simple to the survivor (*l*).

When real or personal property was given to husband and wife before the 1st January, 1883, in such terms as would have constituted them joint tenants if they had not been husband and wife, they held not as joint tenants but as tenants by entireties. Such a limitation, however, contained in any deed or will after 1882 creates a joint tenancy (*m*).

If husband and wife were joint tenants before marriage, they still remained so after marriage, and did not become tenants by entireties (*n*).

(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 51.
(*h*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 28.
(*i*) Co. Litt. 25 b.
(*k*) *Cook* v. *Cook*, 2 Vern. 545.
(*l*) *Vick* v. *Edwards*, 3 P. W. 372; 2 Eq. Abr. 473.
(*m*) *Thornley* v. *Thornley*, [1893] 2 Ch. 229; 62 L. J. Ch. 370; 68 L. T. 199; 41 W. R. 541; 3 R. 311.
(*n*) Co. Litt. 187 b.

Corporations could not formerly acquire or hold an estate as joint tenants, but they have been capable of doing so since the 8th August, 1899 (*o*).

A joint tenancy may be severed and turned into a tenancy in common—(1) by a disposition made by one of the joint owners amounting at law or in equity to an assignment of the share of that owner; (2) by mutual agreement between the joint owners (*p*). It is of importance for a purchaser when taking a conveyance from the survivor or survivors of two or more joint tenants, to ascertain whether any severance of the joint tenancy had taken place in the joint lifetime, and inquiry should be made with a view to throw upon the vendor's solicitors the responsibility of stating that they have no knowledge of any such severance.

Although under the limitations in a deed or the provisions of the Conveyancing Act, 1881 (*q*), A. and B. may take as joint tenants at law, they will, in the following cases, be deemed to be tenants in common in equity, namely, (1) where they are mortgagees (*r*); (2) where they are partners and the property is partnership property (*s*); and (3) where they are purchasers and the purchase-money has been advanced by them in unequal shares (*t*).

See MORTGAGES—PARTITION—PARTNERSHIP—TENANTS BY ENTIRETIES—TENANTS IN COMMON.

Requisitions.

1. *The conveyance to A. and B. as joint tenants appears to have been in consideration of* 1,000*l. paid by A., and* 500*l. paid by B. Under these circumstances A. and B. were tenants in common in equity, and B.'s heir-at-law must therefore join in the conveyance to the purchaser.*

(*o*) Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20).
(*p*) *Re Wilks, Child* v. *Bulmer*, [1891] 3 Ch. 59; 60 L. J. Ch. 696; 65 L. T. 184; 40 W. R. 13.
(*q*) 44 & 45 Vict. c. 41, s. 51.
(*r*) *Re Jackson, Smith* v. *Sibthorpe*, 34 Ch. D. 732; 56 L. J. Ch. 593; 56 L. T. 562; 35 W. R. 646.
(*s*) Co. Litt. 182 a; Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 20.
(*t*) *Lake* v. *Craddock*, 3 P. W. 158.

2. *Is the vendor or are his solicitors aware of any deed, act, matter or thing, which has operated to sever the joint tenancy of the vendor and A. B., deceased? The certificates of the Inland Revenue Commissioners, showing that the estate duty and succession duty leviable on the death of A. B., deceased, have been paid, must be produced and handed over to the purchaser.*

JOINTURE.

A woman is not entitled both to jointure and dower out of her husband's lands (*u*). In order to effectually prevent the wife claiming dower, the jointure must (1) be made before marriage, (2) take effect upon the death of the husband, (3) be for the widow's own life at least or during widowhood, (4) be made to the widow and not to another in trust for her, and (5) be made and expressed to be in satisfaction of dower (*x*).

If a woman before marriage expressly accepts any provision made in lieu of dower, she will be restrained in equity from claiming dower out of her husband's lands.

See DOWER.

Requisition.

Mrs. B., the widow of A. B., deceased, appears to be entitled to jointure out of, amongst other property, the land contracted to be sold. If she is still alive her concurrence must be obtained. If dead, her death must be proved in the usual way.

(*u*) The Statute of Uses (27 Hen. 8, c. 10), s. 4.
(*x*) 2 Blackstone, 138.

JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF.

There is no occasion to search for Judgments or Crown Debts. The following :—(1) Judgments (including those obtained by the Crown); (2) Recognizances (including those entered into on behalf of the Crown); (3) Inquisitions finding a debt due to the Crown; (4) Obligations or specialties made to the Crown; (5) Acceptances of office under the Crown,—no longer operate as charges on land, no matter what their date may be, unless and until a writ or order for enforcing the judgment or Crown debt has been registered at the Land Registry Office (*y*).

Every writ or order affecting land, including those issued or made for the purpose of enforcing a judgment obtained by the Crown, and every delivery in execution in pursuance of any such writ or order, is void against purchasers for value unless the writ is registered at the Land Registry Office (*z*).

Registration ceases to have effect after five years, but may be renewed from time to time, and if renewed has effect for five years from the date of renewal (*a*). Where the proceeding in which a writ or order was issued or made is registered as a *lis pendens* in the name of the person whose land is affected by it, the absence of registration of the writ or order does not affect the registration of the *lis pendens* (*b*).

Prior to the Judicature Act judgment creditors were entitled to a preference in administration if their judgment was registered, and it was formerly held that the Judicature Act had not affected this priority (*c*). The Court of Appeal has now overruled the previous decision, and decided

(*y*) Land Charges Act, 1900 (63 & 64 Vict. c. 26, s. 2; Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 6.
(*z*) 63 & 64 Vict. c. 26, s. 3; 51 & 52 Vict. c. 51, s. 6.
(*a*) 51 & 52 Vict. c. 51, s. 5 (3).
(*b*) *Ibid.* s. 6 (b).
(*c*) *Re Maggi, Whinehouse* v. *Whinehouse* (1882), 20 Ch. D. 545; 51 L. J. Ch. 560; 46 L. T. 362; 30 W. R. 729.

that the Judicature Act has abolished this preference (*d*). There is consequently no longer any advantage in registering judgments, and the register is thus practically closed, especially as no entry can now be made in it without an order of the Court (*e*).

See also SEARCHES.

Requisition.

A writ of elegit is registered against the name of the vendor. The judgment must be satisfied and the entry cancelled before completion.

JUDICIAL SEPARATION AND PROTECTION ORDERS.

This subject is still of importance in the case of property of women married, and whose title accrued before 1883.

The effect of a judicial separation is that the wife is, from the date of the order and whilst the separation continues, considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her, and such property may be disposed of by her in all respects as a *feme sole*, and on her decease, in case she dies intestate, it goes as it would have gone if her husband had been then dead; but if the wife again cohabits with her husband, the property she is entitled to when such cohabitation takes place is held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate (*f*).

It is to be observed that the above applies only to such property as the wife may acquire, or which may come to or devolve upon her after the decree, and not to property

(*d*) *Re Whitaker, Whitaker* v. *Palmer*, [1901] 1 Ch. 9; 70 L. J. Ch. 6; 83 L. T. 449; 49 W. R. 106.
(*e*) Land Charges Act, 1900 (63 & 64 Vict. c. 26).
(*f*) Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 25.

to which she was entitled in possession at the date of the decree (*g*).

A wife deserted by her husband may apply to a police magistrate or justices in petty sessions for an order to protect any money or property she may acquire by her industry, or may have become possessed of after such desertion, and the justices may order that such money and property shall belong to the wife as if she were a *feme sole*. The effect of such an order is that the wife during its continuance is deemed to be and to have been during such desertion in a like position in all respects with regard to property and contracts and suing and being sued as she would be if she had obtained a decree of judicial separation (*h*).

Where under a settlement a life interest for her separate use without power of anticipation had, before her desertion by her husband, devolved upon a married woman, who subsequently obtained a protection order, it was held that such interest did not come within the above provisions, and that consequently the restraint imposed by the settlement continued to attach (*i*).

Requisition.

Mrs. A. B., the vendor, appears to have been married and acquired the property contracted to be sold prior to the 1st January, 1883. *Had she obtained a judicial separation or protection order? If so, the decree or order must be abstracted in chief. If she had not obtained such order, how is it proposed to make a title?*

(*g*) *Waite* v. *Morland*, 38 Ch. D. 135; 57 L. J. Ch. 655; 59 L. T. 185; 36 W. R. 484.

(*h*) 20 & 21 Vict. c. 85, s. 21.

(*i*) *Hill* v. *Cooper*, [1893] 2 Q. B. 85; 62 L. J. Q. B. 423; 69 L. T. 216; 41 W. R. 500; 57 J. P. 663; 4 R. 418.

LAND IMPROVEMENT ACTS.

By a series of statutes known as the Public Money Drainage Acts, 1846 to 1856 (*k*), a person in actual possession or receipt of the rents and profits of any land (except a tenant for life or years paying a rent not less than two-thirds of a rack rent, and a tenant for years for a term which shall not have exceeded fourteen years from the commencement) is enabled to borrow money and charge such lands with its payment by means of a rentcharge lasting for twenty-two years. Such charges are registered at the office of the Ministry of Agriculture in the name of the person or persons to whom the advance was made.

By the Land Drainage Act, 1861 (*l*), the Commissioners of Sewers (now the local authority) may, with the consent of the Inclosure Commissioners (now the Ministry of Agriculture), commute an obligation imposed on any person by reason of tenure, custom, prescription or otherwise, to repair any walls, maintain any sewer, or do any other work within their jurisdiction (*m*); and any such commutation may be charged on the land in respect of which the obligation arose, and is recoverable like tithe rentcharge, and has priority over all incumbrances created or to be created by any proprietor of the lands charged (*n*). The register of such charge is at the office of the clerk of the peace of the county (*o*).

Certain other statutes (*p*) authorize a person in actual possession or receipt of the rents and profits of any land, except where such person is tenant for life or lives holding under a lease not renewable, or tenant for years not renew-

(*k*) The Public Money Drainage Acts, 1846, 1847, 1848, 1850 and 1856, (9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; and 19 & 20 Vict. c. 9).

(*l*) 24 & 25 Vict. c. 133.

(*m*) *Ibid.* s. 34.

(*n*) *Ibid.* s. 35.

(*o*) *Ibid.* s. 36.

(*p*) The Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), as amended by the Limited Owners' Residences Act, 1870 (33 & 34 Vict. c. 56); The Limited Owners' Residences Act (1870) Amendment Act, 1871 (34 & 35 Vict. c. 84); The Limited Owners' Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31); and the District Councils (Water Supply Facilities) Act, 1897 (60 & 61 Vict. c. 44); The Improvement of Land Act, 1899 (62 & 63 Vict. c. 46).

able where less than twenty-five years are unexpired at the time of making application for the loan, to borrow money and charge the lands with its repayment by means of a rentcharge lasting for twenty-five, or since the 1st January, 1900, forty years. Such charges are registered at the Land Registry Office and at the office of the Ministry of Agriculture in the name of the person or persons to whom the advance is made.

By the Public Health Act, 1875, where persons have advanced money for expenses which are by the Act, or are declared by the local authority to be private improvement expenses, the local authority may grant a rentcharge of 6*l.* per annum, lasting for thirty years, for every 100*l.* expended. The charge may be searched for at the office of the local authority (*q*).

A statute of 1890 (*r*), replacing the Artizans' and Labourers' Dwellings Acts, 1868 to 1882 (*s*), enables a local authority to grant to an owner a rentcharge of 6*l.* per annum for every 100*l.* expended in the execution of any works required by the Act. The rentcharge lasts for thirty years, and is a charge upon the estate, having priority to all existing and future charges, with the exception of quit-rents and other charges incident to tenure, tithe rentcharge, and charges under any Act authorizing advances of public money (*t*). These charges may be searched for at the office of the clerk of the peace for the county, and when the county is Middlesex or Yorkshire, at the local registry.

Terminable charges may be created under various other statutes, but the charges referred to above are of the most frequent occurrence.

All statutory charges created otherwise than by deed after the 31st December, 1888, must be registered at the office of the Land Registry, or they are void as against a purchaser for value, and even charges created before that date will not, after one year from the first assignment of the charge

(*q*) 38 & 39 Vict. c. 55.
(*r*) The Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).
(*s*) 31 & 32 Vict. c. 130; 38 & 39 Vict. c. 36; 42 & 43 Vict. c. 63; 42 & 43 Vict. c. 64; 45 & 46 Vict. c. 54.
(*t*) 53 & 54 Vict. c. 70, s. 37.

inter vivos taking place after that date, be recoverable against a purchaser for value unless they have been duly registered (*u*). As more than thirty years have now elapsed since the Land Charges Registration and Searches Act, 1888, came into operation, all terminating charges not required to be registered under that Act will now have terminated, and there is accordingly no longer any occasion to search for any terminating charges which are not registered under that Act, and all that is now necessary is to search for them at the Land Registry only.

See AGRICULTURAL HOLDINGS.

Requisitions.

1. *The property seems to have been charged at one time with a drainage rentcharge. Particulars should be supplied of such rentcharge. What evidence is offered of its having ceased? If redeemed, the certificate of the Ministry of Agriculture should be abstracted and produced.*

2. *It is assumed that the vendor's solicitor is not aware of any charges affecting the property created under any statute and not disclosed by the abstract.*

LAND TAX.

Land tax was first made perpetual in the year 1798 (*x*).

Prior to the passing of the Finance Act, 1896, the quota required from every parish was leviable by an equal rate not exceeding 4*s.* in the £, on the annual value of all the unexonerated land in the parish. In many parishes, however, a comparatively small portion of the land was assessed, the small owners escaping. The Finance Act, 1896, reduced the maximum rate to 1*s.* in the £ (*y*), and

(*u*) Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), ss. 10, 12.
(*x*) The Land Tax Perpetuation Act, 1798 (38 Geo. 3, c. 60).
(*y*) 59 & 60 Vict. c. 28, s. 31.

where such rate fails to produce the quota the Government loses the deficiency. But the Act requires the Commissioners to charge all land on which the tax has not been redeemed and exonerated; consequently a considerable number of land owners who did not formerly pay land tax, some of whom purchased the land as free from land tax, are now called upon to pay it.

Land contracted to be sold is deemed to be subject to land tax, and the purchaser is not entitled to any compensation in respect of such tax, although it is not expressly mentioned in the particulars or contract. When particulars or contract state that land tax has been redeemed the purchaser should call for production of the certificate of the Ministry of Agriculture or the Inland Revenue Commissioners, showing that the land is exonerated (*z*).

Prior to 24th June, 1802 (*a*), a person redeeming his land tax became entitled to have it collected by the Government and handed over to him; in such case the tax is "redeemed but not exonerated." A person may now redeem his land tax by payment to the Inland Revenue Commissioners of a sum equal to twenty-five years' purchase (*b*). He is then entitled to a certificate charging the land with the sum paid, and interest equal to the amount of the land tax; and when the certificate is registered under the Land Charges Registration Act, 1888, the charge has priority over all other charges and incumbrances (*c*).

When a person having an estate in hereditaments other than of inheritance redeems the land tax, the hereditaments are chargeable for his benefit with the money paid for redemptions and with a yearly sum by way of interest equal to the land tax redeemed (*d*). The Real Property Limitation Act, 1874, applies to such a charge (*e*).

(*z*) *Poppleton* v. *Buchanan*, *Buchanan* v. *Poppleton*, 27 L. J. C. P. 210; 31 L. T. 83; 6 W. R. 372; 4 Jur. (N. S.) 414; 4 C. B. (N. S.) 20.
(*a*) 38 Geo. 3, c. 60, s. 17.
(*b*) Finance Act, 1921 (11 & 12 Geo. 5, c. 32), s. 64.
(*c*) 59 & 60 Vict. c. 28, s. 33.
(*d*) 42 Geo. 3, c. 116, s. 123.
(*e*) *Skene* v. *Cook*, [1902] 1 K. B. 682; 71 L. J. K. B. 446; 86 L. T. 319; 50 W. R. 506.

Requisitions.

1. *The land being sold as free from land tax, the certificate of the Ministry of Agriculture, with receipt attached, must be produced and handed over to the purchaser on completion.*

2. *Is land tax payable in respect of the property contracted to be sold? If so, what is its amount?*

LAPSE.

See WILLS.

LEASE AND RELEASE.

See RELEASE.

LEASEHOLD PROPERTY.

All leases exceeding the term of three years from the making thereof, and all leases not exceeding three years from the making thereof whereupon the rent reserved does not amount to two-thirds of the full improved value of the premises demised, are required by the Statute of Frauds to be in writing, and signed by the lessor or his agent authorized in writing (*f*), and all such leases made since the 1st January, 1845, are void at law unless made by deed (*g*); but an instrument purporting to be a lease, though void at law in consequence of its not being made by deed, may be valid as an agreement for a lease if it satisfies the section of the Statute of Frauds requiring a contract for a lease or some memorandum thereof to be in writing, signed by the party charged or his agent (*h*). If

(*f*) 29 Car. 2, c. 3, ss. 1, 2.
(*g*) 7 & 8 Vict. c. 76, s. 4; 8 & 9 Vict. c. 106, s. 3.
(*h*) 29 Car. 2, c. 3, s. 4.

under an agreement for a lease the intended tenant takes possession, he at once becomes at law a tenant from year to year upon such of the terms of the agreement as are not inconsistent with a yearly tenancy (*i*); but in equity he is considered to hold possession under the agreement upon the same terms as if the lease had actually been granted, and will now be treated in every Court as so holding (*k*).

Any assignment or surrender of any lease, whether it exceeded three years from the making thereof or not, was required by the Statute of Frauds to be by deed or writing, signed by the person so assigning or surrendering, or his agent lawfully authorized by writing (*l*) and, since the 1st January, 1845, an assignment of a lease and a surrender in writing of an interest which the Statute of Frauds required to be created by writing, are void at law, unless made by deed (*m*). The Statute of Frauds does not apply to surrenders by operation of law, but the grant of a new lease in possession with the oral assent of a person in possession under a prior subsisting lease does not operate as a surrender by operation of law, unless the old tenant gives up possession to the new tenant at or about the time of the grant of the new lease (*n*).

The grantee of a reversion of hereditaments leased for lives or years is entitled to put in force against the lessee the conditions and covenants incident to the reversion of such herditaments (*o*), and the lessee, on the other hand, has the like remedy against the grantee of the reversion as he had against the grantor (*p*).

Whether an assurance be an assignment or underlease depends upon the effect of the assurance, and not upon the words employed. Thus, an assurance of a leasehold interest for a period less than the whole term, is an under-

(*i*) *Doe* d. *Rigge* v. *Bell*, 5 T. R. 471; 2 R. R. 642.
(*k*) *Walsh* v. *Lonsdale*, 21 Ch. D. 9; 52 L. J. Ch. 2; 46 L. T. 858; 31 W. R. 109.
(*l*) 29 Car. 2, c. 3, s. 3.
(*m*) 7 & 8 Vict. c. 76, s. 4; 8 & 9 Vict. c. 106, s. 3.
(*n*) *Wallis* v. *Hands*, [1893] 2 Ch. 75; 62 L. J. Ch. 586; 68 L. T. 428; 41 W. R. 471; 3 R. 351.
(*o*) 32 Hen. 8, c. 34, s. 1.
(*p*) *Ibid.* s. 2.

lease (*q*); while, even though an assurance purports to be an underlease but comprises the whole term, it may be an assignment (*r*). A covenant not to assign is not broken by the granting of an underlease (*s*); nor is a lessee who covenants with his lessor for the acts of himself and his "assigns" liable for a breach of the covenant in respect of the offence of his underlessee (*t*); but a lessee is entitled to the benefit of a covenant made with his lessor, his heirs, and assigns, and may sue to restrain a breach (*u*).

On a contract to grant or assign a lease for lives, the purchaser is entitled to a 40 years' title, and if the lease was granted within that period can therefore call for the title to the reversion.

On a contract to grant or assign a lease for a term of years, whether to be derived, or derived out of a freehold or leasehold estate, the intended lessee or assign is not entitled to call for the title to the freehold (*x*).

On a contract to grant or assign a lease for a term of years, whether to be derived, or derived out of a leasehold interest with a leasehold reversion, the intended lessee or assign has the right to call for the title to the lease under which the intended lessor or assignor holds (*y*), but has not the right to call for the title to the leasehold reversion (*z*).

On an assignment for the whole term of part of land demised by a lease the assign is liable to the landlord for the whole of the rent reserved by such lease (*a*). On such an assignment, therefore, it is usual to provide for an apportionment of the rent reserved, but such apportionment will

(*q*) *Cottee* v. *Richardson*, 7 Ex. 143.

(*r*) *Langford* v. *Selmes*, 3 Jur. (N. S.) 859; 3 K. & J. 220; *Beardman* v. *Wilson*, L. R. 4 C. P. 57; 38 L. J. C. P. 91; 19 L. T. 282; 17 W. R. 54.

(*s*) *Crusoe* d. *Blencowe* v. *Bugby*, 3 Wils. 234; 2 Bla. W. 766.

(*t*) *Bryant* v. *Hancock & Co.*, [1898] 1 Q. B. 716; 67 L. J. Q. B. 507; 78 L. T. 397; 46 W. R. 386; 62 J. P. 324.

(*u*) *Tait* v. *Gosling*, 11 Ch. D. 273; 48 L. J. Ch. 397; 40 L. T. 251; 27 W. R. 394.

(*x*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 1.

(*y*) *Gosling* v. *Woolf*, [1893] 1 Q. B. 39; 68 L. T. 89; 41 W. R. 106; 5 R. 81.

(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 3 (1), 13 (1).

(*a*) *Johnson* v. *Wilde*, 44 Ch. D. 146; 59 L. J. Ch. 322; 62 L. T. 537; 38 W. R. 500

not be binding on the landlord unless he concurs. Consequently, notwithstanding the assignment, the landlord will still be able to distrain for the whole of any rent in arrear on any portion of the property demised. In order to give the tenant whose land is subject to distress for rent, which is primarily payable by another, an effectual remedy over against the tenant in arrear, it was formerly usual to insert in an assignment of part of leasehold property cross powers of distress enabling either party to distrain for all costs and expenses which he might incur in consequence of the omission of the other party to pay his apportioned rent. This clause has of late been, to some extent, discarded in consequence of the provision of the Bills of Sale Act, 1878 (*b*), whereby "licenses to take possession of personal chattels as security for any debt" are bills of sale within the meaning of the Acts of 1878 and 1882, and consequently void as not being in the form in the schedule to the Act of 1882 (*c*).

It is suggested that the clause may still be used, as though such a power of distress is a licence to take possession of personal chattels, it is not by way of security for a debt, for the reason that a debt is a liquidated money claim; and a covenant to pay a third person a sum of money which the covenantee is under a liability to pay and to indemnify the covenantee merely constitutes an unliquidated claim (*d*).

An alternative mode of securing the indemnity is by charging the costs and expenses upon the land of the tenant in default. Probably in this case the security will be available for such an amount only as the *ad valorem* mortgage duty impressed thereon extends to cover (*e*).

On a sale of leasehold property, a representation that it is held by lease when it is, in fact, held by underlease is a fatal misdescription (*f*); and where the defendant proposed to take an assignment of a lease, but the plaintiff in his

(*b*) 41 & 42 Vict. c. 31, s. 4.

(*c*) Bills of Sale Act, 1878, Amendment Act, 1882 (45 & 46 Vict c. 43), s. 9.

(*d*) *Johnson* v. *Diamond*, 11 Ex. 73; 1 Jur. (N. S.) 933; 24 L. J. Ex. 217; 3 W. R. 407.

(*e*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 88 (2).

(*f*) *Re Beyfus and Masters's Contract*, 39 Ch. D. 110; 59 L. T. 740; 37 W. R. 261; 53 J. P. 293.

answer offered an underlease, there was held to be no contract (*g*).

Where, after 1881, land held by lease is sold, the purchaser must, unless the contrary appears, assume that the lease was duly granted, and, where the land sold is held by underlease, that the underlease and every superior lease were duly granted (*h*).

The acceptance, with knowledge of a breach of covenant, of rent accruing thereafter precludes a lessor from insisting upon a forfeiture by reason of such breach (*i*), but not so the acceptance after the breach of rent accrued due before it.

And, again, if the breach is a continuing one the acceptance of rent does not affect the right to possession in respect of non-repair after the date when the rent fell due, and no fresh notice under the Conveyancing Act, s. 14, is required (*k*).

In sales, after 1881, of land held by lease or underlease, on the production of the receipt for the last payment due for rent under the lease or underlease before the date of actual completion of the purchase, the purchaser must assume, unless the contrary appears, that all the covenants and provisions of the lease or underlease have been duly performed and observed up to the date of actual completion of the purchase, and further, in the case of an underlease, that all rent due under every superior lease has been paid, and all the covenants and provisions of every superior lease have been duly performed and observed up to that date (*h*).

It has always been necessary to obtain probate or letters of administration with the will annexed of a will relating to leaseholds or other personal property. The assent of the executor to a bequest of leaseholds is required to complete the title of the legatee, but, when given, the legal interest vests without assignment in the person in whose favour the bequest is made.

(*g*) *Holland* v. *Eyre*, 2 S. & S. 194.
(*h*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (4), (5).
(*i*) *Goodright* d. *Walter* v. *Davids*, Cowp. 805; *Croft* v. *Lumley*, 6 H. L. C. 672; 27 L. J. Q. B. 321; 6 W. R. 523; 4 Jur. (N. S.) 903.
(*k*) *Penton* v. *Barnett*, [1898] 1 Q. B. 276; 67 L. J. Q. B. 11; 77 L. T. 645; 46 W. R. 33.

An executor may sell leaseholds and other personalty before obtaining probate, and that notwithstanding that such property may be bequeathed by the will. His power to do so, however, ceases on his assenting to the bequest, and in any case, although he may institute proceedings for specific performance or otherwise before obtaining probate, he must obtain it before evidence in support of his claim is required, *i.e.*, usually before the hearing.

Any one of two or more executors or administrators can sell and assign leaseholds vested in them as such, but all must join in actions for specific performance or otherwise relating to the sale (*l*).

It is a moot point where, on the death intestate of the owner of leaseholds, the legal interest in the term is until the appointment of an administrator; but, on the appointment of an administrator, the term vests in him, and the persons entitled beneficially under the Statute of Distributions cannot obtain the legal interest without an assignment from him.

An administrator *durante minore ætate* has, for the time during which he is appointed, all the powers of an ordinary administrator (*m*), and can therefore sell leaseholds, as can also an administrator *pendente lite* (*n*) while his functions last (*o*).

An executor or administrator may grant an underlease, if necessary for the due administration of the property (*p*). This is, however, an exceptional mode of dealing with the assets, and those who accept a title that way must take it subject to the question whether it was the best way of administering the assets (*q*). Where a testator or intestate has died after the 31st December, 1897, his legal personal representative has the same power of granting leases of free-

(*l*) Shep. Touchstone, 484.

(*m*) *Re Cope, Cope* v. *Cope*, 16 Ch. D. 49; 50 L. J. Ch. 13; 43 L. T. 566; 29 W. R. 98.

(*n*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 70.

(*o*) *Wieland* v. *Bird*, [1894] P. 262; 63 L. J. P. 162; 71 L. T. 267; 6 R. 574.

(*p*) *Oceanic Steam Navigation Co.* v. *Sutherbury*, 16 Ch. D. 236; 50 L. J. Ch. 308; 43 L. T. 743; 29 W. R. 113.

(*q*) *Ibid.* at p. 243.

holds as he has of leaseholds, subject to the same qualifications. In no case has he any right to give an option of purchase (*r*).

When successive interests are given by a testator in leaseholds, the question often arises as to whether there is any obligation on the person having the first interest, usually a tenant for life, to maintain the premises in such a state of repair as to satisfy the covenants in the lease. Where a testator gave leaseholds to two trustees, one of whom was his wife, upon trust for such wife for life, and after her death upon trust for sale and division of the proceeds, and authorized his trustees, if they should think advisable, to sell the premises and invest the proceeds, and allow his wife to receive the income during her life, it was held by the Court of Appeal that there was no obligation on the tenant for life to put the premises, which were in a bad state of repair at the death of the testator, in such a state of repair as to comply with the terms of the leases (*s*). This decision appears to be directed to the question whether the tenant for life was bound to discharge the liabilities in respect of repairs which had accrued at the death of the testator. Where, therefore, a testator directed his executors and trustees to arrange his affairs and manage his estate, and to retain certain leaseholds and to let them on lease, and pay the income derived therefrom to his wife for life for the benefit of herself and her children, and after her decease to divide the whole estate equally between his children, it was held that the income derived from the leaseholds meant the net income, and that the ground rents, current repairs, and other outgoings in respect of the premises must be borne by the tenant for life (*t*), and this has since been followed in other cases (*u*). It may there-

(*r*) *Oceanic Steam Navigation Co.* v. *Sutherbury*, 16 Ch. D. 236; 50 L. J. Ch. 308; 43 L. T. 743; 29 W. R. 113.

(*s*) *Re Courtier, Coles* v. *Courtier, Courtier* v. *Coles*, 34 Ch. D. 136; 56 L. J. Ch. 350; 55 L. T. 574; 35 W. R. 85; 51 J. P. 117.

(*t*) *Re Redding*, [1897] 1 Ch. 876; 66 L. J. Ch. 460; 76 L. T. 339; 45 W. R. 457.

(*u*) *Re Betty, Betty* v. *Att.-Gen.*, [1899] 1 Ch. 821; 68 L. J. Ch. 435; *Re Gjers, Cooper* v. *Gjers*, [1899] 2 Ch. 54; 68 L. J. Ch. 442; 47 W. R. 535.

fore be taken, notwithstanding the contrary view expressed in some reported judgments (*x*), that the Court of Appeal in the case referred to (*y*), only decided that the tenant for life was not bound to put in repair, in accordance with the lease, property which was not in such repair when the testator died, and that the question upon whom the liability is to fall is one of intention, to be gathered from each particular will. If there is no indication whatever, one way or another, it is difficult to see on what principle the tenant for life can avoid taking the burden with the benefit conferred.

In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with possession of the property leased without licence or consent, the covenant, condition or agreement, unless the lease contains an express provision to the contrary, is deemed to be subject to a proviso to the effect that no fine shall be payable for or in respect of such licence or consent, but this proviso does not preclude the right to require payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent (*z*).

It is incumbent on the vendor and not on the purchaser to procure any necessary licence or consent (*a*).

Where a lease contains a covenant by the lessee not to assign or underlet without the consent of the lessor, such consent not to be unreasonably withheld, the lessee may, if the lessor, on being applied to, unreasonably withholds his consent, assign or underlet, as the case may be, without obtaining it (*b*); but an omission to ask for consent is not a mistake in respect of which the Court will grant relief (*c*).

(*x*) *Re Baring, Jeune* v. *Baring*, [1893] 1 Ch. 61; 62 L. J. Ch. 50; 67 L. T. 702; 41 W. R. 87; 3 R. 37; *Re Tomlinson, Tomlinson* v. *Andrew*, [1898] 1 Ch. 232; 67 L. J. Ch. 97; 78 L. T. 12; 46 W. R. 299.

(*y*) *Re Courtier, Coles* v. *Courtier, Courtier* v. *Coles*, 34 Ch. D. 136; 56 L. J. Ch. 350; 55 L. T. 574; 35 W. R. 85; 51 J. P. 117.

(*z*) Conveyancing Act, 1892 (55 & 56 Vict. c. 12), s. 3.

(*a*) *Lloyd* v. *Crisps*, 5 Taunt. 249.

(*b*) *Treloar* v. *Bigge*, L. R. 9 Ex. 151; 43 L. J. Ex. 95; 22 W. R. 843.

(*c*) *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417; 60 L. J. Q. B. 179; 64 L. T. 686; 39 W. R. 338; 55 J. P. 517.

In such a covenant an assignment means a legal assignment (*d*).

Leases frequently contain provisoes authorizing the lessor to re-enter on breach of covenants : such provisoes run with the land if they concern it (*e*). A proviso in a lease to a company for re-entry on the company going into liquidation, either compulsory or voluntary, applies to a case of a solvent company going into liquidation for the purpose of reconstruction or amalgamation only (*f*). Before a lessor can take advantage of a forfeiture for breach of covenant for payment of rent, either he must (1) unless the lease dispenses with it, make a formal demand in accordance with the requirements of the Common Law, or (2) there must be a half-year's rent in arrear and no sufficient distress to be found on the premises (*g*). On breach of covenants other than for insurance against fire and for the payment of rent (as to which see p. 231), before the 1st January, 1882, the lessor could at once re-enter in accordance with the terms of the covenant. Since the last-mentioned date, however, a right of entry on forfeiture under any proviso or stipulation in a lease is not enforceable by action or otherwise until the lessor has served on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy it, and in any case requiring him to make compensation in money, and the lessee has failed within a reasonable time so to remedy and compensate the lessor. The Court may grant relief to a lessee against forfeiture on such a breach of covenant (*h*), but the fact that the breach has been occasioned through forgetfulness or because the lessee thought it unimportant is not of itself a ground for giving such relief (*i*).

(*d*) *Gentle* v. *Faulkner*, [1900] 2 Q. B. 267; 69 L. J. Q. B. 777; 82 L. T. 708.

(*e*) *Horsey Estate, Ltd.* v. *Steiger*, [1899] 2 Q. B. 79; 68 L. J. Q. B. 743.

(*f*) *Fryer* v. *Ewart*, [1902] A. C. 187; 71 L. J. Ch. 433; 86 L. T. 242; 9 Manson, 281.

(*g*) 4 Geo. 2, c. 28, s. 2; 15 & 16 Vict. c. 76, s. 210.

(*h*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14; Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 5.

(*i*) *Eastern Telegraph Co., Ltd.* v. *Dent*, [1899] 1 Q. B. 835; 68 L. J. Q. B. 564; 80 L. T. 459.

The above provisions do not extend (*k*)—

(1) To a covenant or condition against assigning, underletting, parting with the possession or disposing of the land leased;

(2) To a condition for forfeiture on the bankruptcy, or in the case of a company on liquidation (*l*), of the lessee, or on the taking in execution of the lessee's interest in the case of leases of—

(a) Agricultural or pastoral land;

(b) Mines or minerals;

(c) A house intended to be used as a public-house or beer-shop;

(d) A house let as a dwelling-house with use of chattels not being in the nature of fixtures;

(e) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor or to any person holding under him;

(3) To a condition for forfeiture on the bankruptcy, or in the case of a company on liquidation (*m*), of the lessee, or on taking in execution of the lessee's interest under any lease, other than those specified above, after the expiration of one year from the date of the bankruptcy or taking in execution of the lessee's interest, provided the lessee's interest be not sold within such one year. Until the expiration of such year, and after the expiration of the year if the lessee's interest be sold within it, it would appear that the provisions of the Conveyancing Act, 1881, relating to forfeiture, referred to above, apply (*m*). On a purchase, therefore, from or through a trustee in bankruptcy of property held under a lease in which any such condition appears, inquiry should be made by the purchaser to ascer-

(*k*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14 (6).

(*l*) *Fryer* v. *Ewart*, [1902] A. C. 187; 71 L. J. Ch. 433; 86 L. T. 242; 9 Manson, 281.

(*m*) *Horsey Estate, Ltd.* v. *Steiger*, [1899] 2 Q. B. 79; 68 L. J. Q. B. 743.

tain whether any notice has been given under the Act;

(4) To a covenant in a mining lease to allow access for inspection;

(5) To re-entry or forfeiture or relief in case of non-payment of rent, as to which see below.

Where a lessor is proceeding to enforce his right of re-entry or forfeiture, the Court may, on the application of an underlessee, make an order vesting the lease in such underlessee for the term of the original sub-lease, or any shorter term, upon such conditions as the Court thinks fit (*o*). The provisions of the Conveyancing Act, 1892, to this effect are not merely an extension of those of the Conveyancing Act, 1882, to underleases, but an independent provision; relief can therefore be given thereunder to an underlessee against forfeiture in cases excepted by the Act of 1881, such as non-payment of rent (*p*), whereas in the case of leases the provisions relating to ejectment for non-payment of rent are contained in the Common Law Procedure Acts, which also contain provisions for relief in such case (*q*).

Where a mortgagor is in possession of land subject to a lease the notice under the Conveyancing Act should be given by the mortgagee, who must be a party to an action to enforce the right of re-entry (*r*). Where the reversion of land subject to a lease was conveyed after breach the purchaser was formerly unable to take advantage of the act of forfeiture (*s*), but when he has become entitled to the reversion by a conveyance executed on or after the 1st January, 1912, he can do so (*t*).

A long term (that is to say, a residue of not less than 200 years, of a term of originally at least 300 years) without any trust or right of redemption in favour of the freeholder

(*o*) Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 4.

(*p*) *Gray* v. *Bonsall*, [1904] 1 K. B. 601; 73 L. J. K. B. 515; 90 L. T. 404; 52 W. R. 387; 20 T. L. R. 335.

(*q*) 15 & 16 Vict. c. 76, ss. 210, 211, 212; 23 & 24 Vict. c. 126, s. 1.

(*r*) *Matthews* v. *Usher*, [1900] 2 Q. B. 535; 69 L. J. Q. B. 856; 83 L. T. 353; 49 W. R. 40.

(*s*) *Cohen* v. *Tanner*, [1900] 2 Q. B. 609; 69 L. J. Q. B. 904; 83 L. T. 64; 48 W. R. 642.

(*t*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 2.

or other person entitled in reversion, with no rent or merely a peppercorn or other rent having no money value, or, having had a rent originally, that has ceased to be payable, may be enlarged into a fee simple by declaration by deed made by (1) any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but in the case of a married woman with the concurrence of her husband, unless she is entitled for her separate use, or unless she was married or her interest in the term was acquired after 1882; (2) any person being in receipt of income as trustee in right of the term or having the term vested in him in trust for sale; or (3) any person in whom the term is vested as legal personal representative (*u*). A yearly rent of 3*s*., which as between the lessees had become charged on other land in exoneration of the premises in question, has been held to prevent the section applying (*v*); but a rent of one silver penny, if lawfully demanded, has been held not to do so (*x*). The provision referred to applies whether the immediate reversion of the term is freehold or not, but does not apply to any term liable to be determined by re-entry for condition broken, or to any term created by sub-demise out of a superior term itself incapable of being enlarged into a fee simple (*y*). The estate in fee simple acquired by enlargement is subject to the same trusts, powers, executory limitations over, rights and equities, covenants, provisions and obligations, as it would have been subject to if it had not been so enlarged (*z*); and whether the term was originally created without impeachment of waste or not, the estate acquired includes the fee simple in all mines and minerals which at the time of enlargement have not been severed (*a*).

A lessee has constructive notice of his lessor's title, that is to say, a man who takes a lease is in a similar position with regard to notice as one who purchases the property leased;

(*u*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 65.
(*v*) *Re Smith and Stott*, 29 Ch. D. 1009; 48 L. T. 512; 31 W. R. 411.
(*x*) *Re Chapman and Hobbs*, 29 Ch. D. 1007; 54 L. J. Ch. 810; 52 L. T. 805; 33 W. R. 703.
(*y*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 11.
(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 65 (4).
(*a*) *Ibid.* s. 65 (6).

and this rule has not been affected by the provisions of the Vendor and Purchaser Act forbidding a lessee, in the absence of express stipulation, from inquiring into his lessor's title (*b*).

See ADMINISTRATORS, SALES AND MORTGAGES BY — COVENANTS—EXECUTORS, SALES AND MORTGAGES BY —LENGTH OF TITLE—RATES AND TAXES—WILLS.

Requisitions.

1. *The will of A. B., deceased, must be proved and probate produced before completion.*

2. *How does the vendor propose to prove the assent of A. B.'s executor to the bequest of the premises?*

3. *The rents of the leasehold premises, the life interest in which Mrs. A. proposes to mortgage, are represented to be* 300*l*. *It appears questionable, on the words of the will and on the authorities, whether that sum is not reducible by the ground rents and costs of repair. The assent of the trustees of the testator's will acknowledging their liability to these payments must be obtained for what it is worth.*

4. *It is presumed that no notice has been given to determine the lease of* 19 *at the end of the first* 14 *years.*

5. *Having regard to the form of the assignment of* 19 *, the assignee of the piece of ground coloured yellow on the plan is liable to distress for the rent of the whole premises comprised in the lease by which the part coloured yellow was demised, and also to an action for debt in respect of a proportionate part of the rent reserved by such lease: This fact was not stated in the particulars or known to the purchaser: he declines, therefore, to take an assignment unless a release is obtained, but he is willing to accept an underlease of the piece coloured yellow.*

(*b*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2 (2); *Patman* v. *Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.

6. *Have the drains mentioned in the lease of* 19 *been made, and is any sum due in respect of the expense of making the same to any and what person or body?*

7. *The vendor must at his own expense execute a declaration enlarging the residue of the term of* 300 *years into a fee simple. This must be done before the execution of the conveyance to the purchaser.*

8. *As the vendor contracted to sell a freehold proper, the costs of enlarging the term of* 500 *years into a fee simple must be allowed off the purchase-money.*

9. *As the vendor contracted to sell the fee simple, an abatement from the purchase-money must be allowed sufficient to defray the cost of subsequently enlarging into a fee simple the term which, it appears, is all that the vendor has.*

10. *Is the property contracted to be sold insured, in accordance with the covenant in the lease, in the X. Insurance Office? The policy must be produced and held in trust for the purchaser.*

11. *When were the premises last painted inside and outside respectively?*

12. *Has any notice of want of repair been served which remains uncomplied with?*

13. *Is the vendor, or are his solicitors, aware of any breach of any of the covenants in the lease of* 19 ?

14. *The last receipt for ground rent must be produced. Please supply the full name and address of the person to whom the rent is now payable.*

LEGACIES.

See CHARGES BY WILL—EXECUTORS, SALES AND MORTGAGES BY—LEASEHOLD PROPERTY.

LEGAL ESTATE.

A purchaser is in all cases, in the absence of stipulation to the contrary, entitled to have the legal estate in the premises he has contracted to purchase conveyed to or otherwise vested in him, but inasmuch as the Statute of Limitations practically transfers the estate at the expiration of the statutory period from the former owner to the person whose possession has barred his right (*c*), the Court will compel a purchaser to accept a title depending upon it, even though the vendor had no title at the date of the contract (*d*).

The provisions of the Real Property Limitation Acts, 1833 (*e*) and 1874 (*f*), do not run in favour of a beneficiary against an express trustee, but a beneficiary can get a title thereunder as against a mortgagee or a trustee other than an express trustee (*g*).

An equitable mortgagee under a mortgage or charge made by deed executed on or after the 28th August, 1864, has, under Lord Cranworth's Act, after the expiration of one year from the time when the principal money becomes payable, or when any interest has been in arrear for six months, or after an omission to pay an insurance premium in accordance with the terms of the mortgage, a power to sell and convey the legal estate, which was vested in the mortgagor (*h*). This provision was repealed from the 1st January, 1882 (*i*), and the power of sale substituted by the Conveyancing Act, 1881 (*k*), does not contain any provision enabling an equitable mortgagee to deal with the legal estate (*l*).

(*c*) *Scott* v. *Nixon*, 3 D. & War. 388; 2 Con. & L. 185; 6 Ir. Eq. R. 8.
(*d*) *Games* v. *Bonner*, 54 L. J. Ch. 517; 33 W. R. 64.
(*e*) 3 & 4 Will. 4, c. 27.
(*f*) 37 & 38 Vict. c. 57.
(*g*) *Sands* to *Thompson*, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397.
(*h*) *Re Solomon and Meagher's Contract*, 40 Ch. D, 508; 58 L. J. Ch. 339; 60 L. T. 487; 37 W. R. 331; 23 & 24 Vict. c. 145, ss. 11, 15.
(*i*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 71.
(*k*) *Ibid.* s. 19.
(*l*) *Re Hodson and Howe's Contract*, 35 Ch. D. 668; 56 L. J. Ch. 755; 56 L. T. 837; 35 W. R. 553.

Before the provisions of the Conveyancing Act, 1881, on the subject came into operation (*m*), the only way to pass by deed the legal estate in fee simple was by a grant to A. and his heirs. In all deeds executed since then the use of those words or of the words "in fee simple" is necessary (*n*).

In order to pass the legal estate in leasehold property there must be found on the face of the document an intention on the part of the assignor to deliver up possession so that the assignee may come in before the termination of the term (*o*).

See MORTGAGES—RECONVEYANCE—WILLS.

Requisitions.

1. *It appears from the abstract that the legal estate has been outstanding in a trustee for many years. Is the original trustee still living? If so, he must concur in the conveyance. If he is dead, a supplemental abstract should be delivered showing the devolution of the legal estate.*

2. *The legal estate under the will of John Smith was apparently vested in John Smith and Thomas Walker, upon trust. The trustees, if alive, or, if dead, the legal personal representative of the last survivor, must join in the conveyance.*

LEGAL PERSONAL REPRESENTATIVES.

See ADMINISTRATORS, SALES AND MORTGAGES BY—EXECUTORS, SALES AND MORTGAGES BY—LEASEHOLD PROPERTY—MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE — REAL REPRESENTATIVES — TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE—WILLS.

(*m*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 51.

(*n*) *Re Ethel and Mitchell's and Butler's Contract*, [1901] 1 Ch. 945; 70 L. J. Ch. 498; 84 L. T. 459.

(*o*) *Re Beachey, Heaton* v. *Beachey*, [1904] 1 Ch. 67, at p. 73, per Vaughan Williams, L.J.; 73 L. J. Ch. 68; 89 L. T. 685; 52 W. R. 309.

LENGTH OF TITLE.

In the absence of a stipulation to the contrary, the length of title which can be required by a purchaser is now 40 years (*p*), but the title cannot commence *in nubibus* at the exact point of time which is represented by 40 years; it must commence at or before 40 years with something which is in itself, or which it is agreed shall be, a good root of title (*q*).

The statutory period is, however, very frequently reduced by condition, and even trustees may now purchase or lend money on the security of property with a shorter title, provided that such title is one which a person acting with prudence and caution would accept (*r*).

It was decided by Malins, V.-C., in *Bolton* v. *London School Board* (*s*), that a 40 years' title cannot be required where there is abstracted a deed or instrument more than 20 years old at the date of the contract which contains a recital that the vendor was seised in fee simple; but this decision has since been disapproved, and it is doubtful whether it would be followed (*t*).

In the case of land registered under the Land Transfer Acts with a possessory title only, the title should be shown by an abstract in the ordinary form for the usual period of 40 years (*u*).

A purchaser buying a lease or underlease is, apart from any special contract he may make, entitled to an abstract of the original lease or underlease in addition to the usual 40 years' title (*x*); but he is not entitled to an abstract of dealings with the term prior to the necessary commencement of title unless there is some good reason arising from

(*p*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 1.
(*q*) North, J., in *Re Cox and Neve's Contract*, [1891] 2 Ch. 109, at p. 118; 64 L. T. 733; 39 W. R. 412.
(*r*) The Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 8 (3).
(*s*) 7 Ch. D. 766; 47 L. J. Ch. 461; 38 L. T. 277; 26 W. R. 549.
(*t*) *Re Wallis and Grout's Contract*, [1906] 2 Ch. 206; 75 L. J. Ch. 519; 94 L. T. 815; 54 W. R. 534; 22 T. L. R. 540.
(*u*) Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 13.
(*x*) *Frend* v. *Buckley*, L. R. 5 Q. B. 213; 39 L. J. Q. B. 90; 22 L. T. 170; 18 W. R. 680; 10 B. & S. 973.

the special circumstances of the case (*y*); nor is he entitled to an abstract of the agreement to grant the lease, even though the lease should be made in exercise of some power (*z*).

On a contract to grant or assign a lease for lives, the purchaser is entitled to a 40 years' title, and if the lease was granted within that period can therefore call for the title to the reversion.

On a contract to grant or assign a lease for a term of years, whether to be derived or derived out of a freehold or leasehold estate, the intended lessee or assign is not entitled to call for the title to the freehold (*a*).

On a contract to grant or assign a lease for a term of years, whether to be derived or derived out of a leasehold interest with a leasehold reversion, the intended lessee or assign has the right to call for the title to the lease under which the intended lessor or assignor holds (*b*), but has not the right to call for the title to the leasehold reversion (*c*).

The effect of these statutory provisions is not to alter the rule that a lessee or sub-lessee, as the case may be, has constructive notice of the lessor's title. He is now in the same position with regard to notice as if he had, before the Acts, stipulated not to inquire into his lessor's title (*d*). It is, no doubt, reasonable that where a man is taking a mere occupation lease the lessor's title should not be inquired into, but if the proposed lessee intends to expend money on the premises he cannot safely adopt the statutory form of contract and abstain from inquiring into such title (*e*); and it must be remembered that the provisions referred to do not apply to the title of a proposed mortgagor, consequently a mortgagee of leaseholds cannot with safety dis-

(*y*) *Williams* v. *Spargo*, W. N. [1893] 100.
(*z*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 4.
(*a*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2 (1).
(*b*) *Gosling* v. *Woolf*, [1893] 1 Q. B. 39; 68 L. T. 89; 41 W. R. 106; 5 R. 81.
(*c*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 3 (1), 13 (1).
(*d*) *Patman* v. *Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707; *Mogridge* v. *Clapp*, [1892] 3 Ch. 382; 61 L. J. Ch. 534; 67 L. T. 100; 40 W. R. 663.
(*e*) *Imray* v. *Oakshette*, [1897] 2 Q. B. 218; 66 L. J. Q. B. 544; 76 L. T. 632; 45 W. R. 681.

pense with the investigation of the vendor's title, except perhaps in cases where the lease has been in existence for at least 12 years; but notwithstanding this, it is the usual practice to do so.

A 40 years' title must, in the absence of special condition, be adduced in the case of copyholds as well as in the case of freeholds; but where land of copyhold or customary tenure has, during the 40 years preceding the contract for sale, been converted into freehold by enfranchisement, then both the copyhold title must be shown up to the enfranchisement and the freehold title subsequently to it. The purchaser has not, however, the right to call for the title to make the enfranchisement (*f*).

On the purchase of a reversionary interest commonly so called, the abstract must disclose the creation of the interest, at however remote a period such creation may have taken place.

In the case of all property held under grant from the Crown (*e.g.*, tithes held as lay property) the abstract must disclose the original grant. It may then omit the intermediate documents and take up the title again 60 years before the date of the contract. It seems doubtful whether the Vendor and Purchaser Act substituting 40 years applies to incorporeal hereditaments.

In the case of an advowson, 100 years' title must still, in general, be shown.

See ADVOWSONS—AGENTS.

Requisitions.

1. *The purchaser has agreed to purchase under an open contract, and he must therefore be supplied with an abstract commencing at least* 40 *years ago.*

2. *In addition to the* 40 *years' title disclosed the purchaser must be supplied with an abstract of the lease creating the term* [*or will or other document creating the reversionary interest.*]

(*f*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (2).

3. *The title is somewhat short: The proposed mortgagees must be satisfied why the proposed mortgagor does not disclose the prior title.*

4. *How did A. B. acquire the property? and where are the previous title deeds?*

5. *The contract to purchase was entered into by A. B. on behalf of the trustees of the will of the late C. D., deceased, and the trustees are advised that, having regard to the Trustee Act*, 1893, *s.* 8 (3), *they should be satisfied why a longer title is not adduced. Will the vendor's solicitors state the reason, so that the trustees' solicitors may advise the trustees whether, under the circumstances, the title is one which "persons acting with prudence and caution" would accept?*

LIEN.

Liens upon land arise under various circumstances. The following have important bearing on the investigation of title :—(1) a vendor's lien where he has conveyed the land without having received the whole of the purchase-money; (2) a purchaser's lien where he has paid the purchase-money, or part of it, without having received a conveyance, and the contract goes off through want of title or is rescinded under a condition (*e*); (3) the lien of an intended lessee who has entered and expended money under the contract (*f*); (4) a trustee's lien in respect of moneys paid or expenses incurred by him in connection with the trust estate; (5) the lien to the extent of the loss caused to the trust estate which a *cestui que trust* has on the beneficial interest of another *cestui que trust* who is liable for a breach of trust (*g*). With regard to all these liens, it may be stated as a general rule that they affect the property in the hands of all persons, except *bonâ fide* purchasers for value

(*e*) *Whitbread* v. *Watt*, [1901] 1 Ch. 94; [1902] 1 Ch. 835; 71 L. J. Ch. 424; 86 L. T. 395; 50 W. R. 442.

(*f*) *Middleton* v. *Magnay*, 2 H. & M. 233.

(*g*) *Jacubs* v. *Rylance*, L. R. 17 Eq. 341; 43 L. J. Ch. 280.

and mortgagees who have obtained the legal estate without notice of the lien (*h*).

A purchaser who abandons a contract by his own default, has no lien for the prematurely-paid purchase-money (*i*).

The provisions of Locke King's Act (*k*) making mortgaged real estates primarily liable for the mortgage debts upon them, were, by the first amending Act (*l*), declared to extend to a vendor's lien for unpaid purchase-money, as regards lands of a testator, and by the second amending Act such provisions were declared to extend to the lands of persons dying intestate after the 31st December, 1877, and to the leaseholds of persons dying testate or intestate after that date (*m*); so that now the devisee, legatee, or heir-at-law takes land of any tenure, subject to and charged with the lien for unpaid purchase-money, unless, in the case of a devise or bequest, a contrary intention is expressed by the testator. As regards the will of a person dying after the 31st December, 1867, a general direction that the debts, or the debts of the testator, shall be paid out of his personal estate does not show a contrary intention (*n*). Nor, in the case of a person dying after the 31st December, 1877, does a direction for payment of such debts out of the testator's residuary real and personal estate or residuary real estate (*o*).

Another class of lien is that of a solicitor who has a lien for costs due on the deeds and documents in his possession belonging to his clients. Such lien only extends to the deeds and documents themselves, and is not enforceable against the property which they represent. It is simply a right to retain the client's documents as against the client and persons representing him. As between the solicitor and third parties, the solicitor has no greater right to refuse

(*h*) *Frail* v. *Ellis*, 16 Beav. 350; 22 L. J. Ch. 467; 20 L. T. (O. S.) 197; 1 W. R. 72; *Davies* v. *Thomas*, 2 Y. & C. Ex. 234; 1 L. J. Ex. Eq. 21.

(*i*) *Dinn* v. *Grant*, 5 De G. & S. 451; *Ex parte Barrell, Re Parnell*, L. R. 10 Ch. 512; 33 L. T. 115; 23 W. R. 846.

(*k*) 17 & 18 Vict. c. 113.

(*l*) 30 & 31 Vict. c. 69.

(*m*) 40 & 41 Vict. c. 34; *Re Kershaw, Drake* v. *Kershaw*, 37 Ch. D. 674; 57 L. J. Ch. 599; 58 L. T. 512; 36 W. R. 413.

(*n*) 30 & 31 Vict. c. 69.

(*o*) 40 & 41 Vict. c. 34.

production of documents on which he has a lien than his client would have if he had the documents in his own possession (*p*); on this principle, it is well established that a solicitor cannot embarrass a suit by keeping papers belonging to an estate which is being administered by the Court (*q*); and this applies, also, to all other representative actions (*r*) and to the winding-up of a company (*s*).

A solicitor has also a lien, recognized by all branches of the Court, though often called a Common Law lien, on his client's funds recovered or preserved in an action, for the costs of such action, and this is so, even when the solicitor is acting for infants (*t*). Such a lien is limited to the interest of the client or clients for whom the solicitor is acting.

The Court has power to charge property of all descriptions which has been recovered or preserved in proceedings in a Court of Justice (*u*) through the instrumentality of a solicitor with the payment of his costs of such proceedings, and may make such order for raising such costs as it may deem proper (*x*), and such charge may be made to rank in priority to that of a mortgagee or other person though not a party to the proceedings in which the property was recovered or preserved (*y*). The solicitor last employed is entitled to such charge in priority to his predecessors (*z*).

Where a solicitor has discharged himself he may be ordered to deliver the deeds and documents to a new solicitor, upon an undertaking being given to hold them

(*p*) Lindley, M.R., in *Re Hawkes, Ackerman* v. *Lockhart*, [1898] 2 Ch. 1; 67 L. J. Ch. 284; 78 L. T. 336; 46 W. R. 445.

(*q*) *Belaney* v. *Ffrench*, L. R. 8 Ch. 918; 43 L. J. Ch. 312; 29 L. T. 706; 22 W. R. 177.

(*r*) *Boden* v. *Hensby*, [1892] 1 Ch. 101; 61 L. J. Ch. 147; 65 L. T. 744; 40 W. R. 205.

(*s*) *Re Capital Fire Insurance Association*, 24 Ch. D. 408; 53 L. J. Ch. 71; 49 L. T. 697; 32 W. R. 260.

(*t*) *Re Wright's Trusts*, [1901] 1 Ch. 317; 70 L. J. Ch. 119; 83 L. T. 515.

(*u*) *Re Humphreys, Ex parte Lloyd-George*, [1898] 1 Q. B. 520; 67 L. J. Q. B. 412; 78 L. T. 182; 46 W. R. 322.

(*x*) The Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28.

(*y*) *Scholey* v. *Peck*, [1893] 1 Ch. 709; 62 L. J. Ch. 658; 68 L. T. 118; 41 W. R. 508; 3 R. 245.

(*z*) *Re Knight, Knight* v. *Gardner*, [1892] 2 Ch. 368; 61 L. J. Ch. 399; 66 L. T. 646; 40 W. R. 460.

without prejudice to his lien and to return them undefaced, and to allow the solicitor access for the purpose of any action by him for costs (*a*).

The question often arises whether a lien has been relinquished so as to be no longer enforceable. The taking of another security may be evidence that it has (*b*). The question is one of intention; as a rule, the mere giving of a personal security is not alone sufficient to take away the lien (*c*).

Requisitions.

1. *The conveyance of* 1881 *has no receipt indorsed. The vendor must produce evidence that the purchase-money was paid, and the land consequently freed from vendor's lien, or A. B. must join in the conveyance to release such lien if it exists.*

2. *It is presumed that the trustees claim no lien on the property, but will join in the conveyance for the purpose of conveying the legal estate.*

3. *The mortgagor's solicitors should supply the proposed mortgagee with a letter, signed by the trustees, to the effect that they claim no lien for costs or otherwise on the trust fund, and that the same now consists of the items specified in the proposal for mortgage.*

4. *It would appear from the master's certificate in the action of* Smith *v.* Jones *that a breach of trust was committed by the trustees of Jones' settlement at the instigation of A. B., the proposed mortgagor. It must be shown that the loss caused thereby has been made good, and that A. B.'s share is not liable to any lien in respect of it.*

(*a*) *Robins* v. *Goldingham*, L. R. 13 Eq. 440; 41 L. J. Ch. 813; 25 L. T. 900; 20 W. R. 277.

(*b*) *Mackreth* v. *Symmons*, 15 Ves. jun. 329; 10 R. R. 85; 2 W. & T. 946.

(*c*) See cases collected in notes to *Mackreth* v. *Symmons*, 2 W. & T. 946.

LIFE ESTATE.

A life estate is an estate of freehold, whereas a term of years, however long, is a mere chattel interest, and personal not freehold property. A life estate is one the duration of which is confined to some life or lives, but not to a fixed term of years : Thus, an estate given to A. for his life and for the life of B. is a life estate, but an estate given for 1,000 years, if A. shall so long live, is only a term of years, liable to determine on the death of A.

Tenants for life, including tenants for years determinable on life, not holding merely under a lease at a rent, and tenants for the life of another, not holding merely under leases at a rent, have, under the Settled Land Acts, very wide powers of alienating settled estate (*d*). Independently of these powers, a tenant for his own life can alienate his estate, and can convey any estate so long as it does not endure beyond the term of his own life. If a tenant for his own life grant the whole of his estate to another, the grantee becomes a tenant for the life of the grantor, and is called a tenant *pur autre vie*, the grantor being called the *cestui que vie*. All estates for life, being freeholds, can be conveyed by any of the methods appropriate to the conveyance of fee simple estates.

If an estate *pur autre vie* be limited to any person without words of limitation, he may dispose of the estate *inter vivos* or by will (*e*), and if he do not so dispose of it the estate devolves upon his legal personal representative, and is distributable amongst his next of kin in the same manner as personal estate (*f*).

If land be limited to the grantee and his heirs during the life of another, the grantee may still dispose of it *inter vivos* or by will (*g*); but if the grantee do not so dispose of the property, then on his death his heir will be

(*d*) See SETTLED LAND, p. 355.
(*e*) The Statute of Frauds (29 Car. 2, c. 3), s. 12; The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 3.
(*f*) 14 Geo. 2, c. 20, s. 9; 7 Will. 4 & 1 Vict. c. 26, s. 6.
(*g*) 29 Car. 2, c. 3, s. 12; 7 Will. 4 & 1 Vict. c. 26, s. 3.

entitled as special occupant by the terms of the grant. In such a case the grantee's widow is not entitled to dower, the estate *pur autre vie* not being an estate of inheritance (*h*). But the interest of the heir is by statute charged with the payment of the intestate's debts (*i*).

If land be limited to the grantee and the heirs of his body during the life of another, the grantee takes an estate which he can dispose of *inter vivos*, but which he cannot dispose of by will (*k*). In such a case the heir of his body will, on the ancestor's death, take free from his debts, and as he takes as special occupant and not by descent, free from the widow's claim to dower (*l*).

Successive limitations of an estate *pur autre vie* are permitted. Thus, an estate during the life of D. may be limited to A. for life, with remainder to B. in tail, with remainder to C. and his heirs; and in such a case the tenant in tail in remainder, with the concurrence of the tenant for life, may alienate the whole estate *pur autre vie*. The analogy with fee simple estates is supported as far as it can be (*m*).

A person claiming estates in remainder, reversion, or expectancy after the death of any person can, on affidavit that he has cause to believe that the *cestui que vie* is dead, obtain an order from the Chancery Division of the High Court for the production of the *cestui que vie;* and if he is not produced, such *cestui que vie* is taken to be dead (*n*).

Estates for life may arise by operation of law, as in the case of estates by the curtesy, estates in dower, and estates tail after possibility of issue extinct. In the case of estates by the curtesy and estates tail after possibility of issue extinct, the tenant by the curtesy and the tenant in tail

(*h*) *Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375.

(*i*) 29 Car. 2, c. 3, s. 12; 7 Will. 4 & 1 Vict. c. 26, s. 6.

(*k*) *Re Barber's Settled Estates*, 18 Ch. D. 624; 50 L. J. Ch. 769; 45 L. T. 433; 29 W. R. 909.

(*l*) *Re Michell, Moore* v. *Moore*, [1892] 2 Ch. 87; 61 L. J. Ch. 326; 66 L. T. 366; 40 W. R. 375.

(*m*) *Allen* v. *Allen*, 2 D. & War. 307; 1 Con. & L. 427; 4 Ir. Eq. R. 472.

(*n*) The Cestui Que Vie Act, 1707 (6 Anne, c. 72).

have the powers of alienating the estate given by the Settled Land Acts to tenants for life.

See SETTLED LAND.

Requisitions.

1. *Proof must be furnished to the purchaser that the* cestui que vie *is alive. Where does he usually reside?*

2. *Proper proof must be forthcoming to show that all the three lives named in the lease of Blackacre are still in existence. What are the addresses of the three persons?*

3. *It is presumed that the proposed mortgagor is in good health. A policy of insurance upon his life for £ must be included in the mortgage. In what office is he insured or does he propose to insure?*

4. *Has the vendor any objection to attending at the office of the X. Assurance Society for examination in order that the purchaser of the life estate may effect an assurance on his life?*

LIMITATION, STATUTES OF.

The law on this subject, prior to the Real Property Limitation Acts, is not now of practical importance in the investigation of title. It is not therefore proposed to deal with the previous law on this subject.

A purchaser may be compelled to accept a title depending upon the Statutes of Limitation (*o*); but inquiry should, in such a case, be made into the circumstances under which possession was taken, and as to the status of the person against whom the statutes are supposed to be running.

In cases where the Crown is entitled to possession of lands, its rights in and to any manors, lands, tenements, tithes, and hereditaments (except liberties and franchises) are barred after the period of 60 years has elapsed since

(*o*) *Scott* v. *Nixon*, 3 D. & War. 388; 2 Con. & L. 185; 6 Ir. Eq. R. 8; *Games* v. *Bonner*, 54 L. J. Ch. 517; 33 W. R. 64.

such hereditaments or their rents were first held or taken adversely to the Crown (*p*).

A tenant in fee simple entitled to possession, who was not under the disability of infancy, coverture, or unsoundness of mind at the time when his right to make an entry or bring an action first accrued, loses such rights after 12 years from the time when they first accrued (*q*).

A tenant in tail entitled in possession, who was not under the disability of infancy, coverture, or unsoundness of mind at the time his rights first accrued, loses such rights after 12 years from the time when they first accrued, as also does every person, whether under disability or not (*r*), whom such tenant in tail could lawfully have barred (*s*). The rights of a person whom the tenant in tail could not lawfully have barred are not lost until 12 years from the time when the rights of the tenant in tail first accrued, or 6 years from the time when such person's interest became vested in possession, whichever period is the longer (*t*).

Where a tenant in tail has, by deed enrolled, made an assurance which, by reason of the want of consent of the protector of the settlement, does not operate to bar persons claiming after or in defeasance of the estate tail, the rights of such persons are barred at the expiration of 12 years from the earliest time when such assurance would have operated to bar their rights if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed (*u*).

Where any other limited owner, not under disability, is entitled to possession, his rights of entry are barred after 12 years from the time when they first accrued (*x*).

The rights of persons claiming any future estate or interest are not barred until 12 years from the time when

(*p*) The Crown Suits Act, 1769 (9 Geo. 3, c. 16); as amended by the Crown Suits Act, 1861 (24 & 25 Vict. c. 62).
(*q*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 2.
(*r*) *Austin* v. *Llewellyn*, 9 Ex. 276; 23 L. J. Ex. 11; 2 C. L. R. 409.
(*s*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 21, 22.
(*t*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 2.
(*u*) *Ibid.* s. 6.
(*x*) *Ibid.* s. 2.

the rights of any person entitled to any particular estate on which such future estate or interest is expectant first accrued, or 6 years from the time when the interest of the person claiming such future estate became vested in possession, whichever period is the longer (*y*). In the case, therefore, of a mortgage of a reversionary interest in land, time begins to run only when the interest falls into possession (*z*).

There is no provision in any Statute of Limitations affecting the right of a mortgagee of personal property to enforce his security; consequently a mortgagee of shares can obtain foreclosure notwithstanding that the debt is barred by 21 Jac. 1, c. 16 (*a*).

When any person is in possession or receipt of the profits of any land, or in the receipt of any rentcharge, by virtue of a lease in writing, by which a rent amounting to the yearly sum of 1*l.* or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rentcharge in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled, the right of the person entitled to such land or rentcharge, subject to such lease, or of the person through whom he claims to make any entry or distress, or to bring an action after the determination of such lease, is deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming, and no such right is deemed to have first accrued upon the determination of such lease to the person rightfully entitled (*b*). But if the rent be less than 1*l.*, or being 1*l.* or more it is not received by some person wrongfully claiming to be entitled to the reversion, no length of time will bar the right of the landlord to

(*y*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 2.

(*z*) *Hugill* v. *Wilkinson*, 38 Ch. D. 480; 57 L. J. Ch. 1019; 58 L. T. 880; 36 W. R. 633.

(*a*) *London and Midland Bank* v. *Mitchell*, [1899] 2 Ch. 161; 68 L. J. Ch. 568; 81 L. T. 263; 47 W. R. 602.

(*b*) 3 & 4 Will. 4, c. 27, s. 9; *Doe* d. *Angell* v. *Angell*, 9 Q. B. 328, at p. 356.

recover on the expiration of the term, and as long as the relation of landlord and tenant subsists the landlord retains his right to the rent (*c*).

No arrears of rent, as such, can be recovered for more than 6 years next after becoming due, or an acknowledgment in writing being given to the person entitled (*d*), although 20 years' arrears may be recovered in an action on a covenant to pay such rent (*e*). An acknowledgment by one of two trustees and executors against the wishes of the other is not binding (*f*).

The right to make an entry or distress, or bring an action to recover land from a tenant at will, is deemed to have first accrued either at the determination of the tenancy or at the expiration of one year next after the commencement of such tenancy, whichever shall first happen; but a *cestui que trust* is not deemed to be a tenant at will to his trustee for this purpose (*g*).

When any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period without any lease in writing, the right of the person entitled, subject to such tenancy, or of the person through whom he claims to make any entry or distress, or to bring an action to recover such land or rent, is deemed to have first accrued at the determination of the first of such years or other period, or at the last time when any rent payable in respect of such tenancy has been received, which shall last happen (*h*).

A person entitled to or claiming under any mortgage of land may bring his action to recover possession or for foreclosure within 12 years next after the last payment of any part of the principal money or interest secured by the mort-

(*c*) *Archbold* v. *Scully*, 9 H. L. C. 360; 5 L. T. 160; 7 Jur. (N. S.) 1169.

(*d*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 42.

(*e*) 3 & 4 Will. 4, c. 42, s. 3; *Paget* v. *Foley*, 2 Bing. N. C. 679; 3 Sc. 120; 2 Hodges, 32; *Strachan* v. *Thomas*, 12 Ad. & E. 536; 4 Per. & D. 229.

(*f*) *Astbury* v. *Astbury*, [1898] 2 Ch. 111; 67 L. J. Ch. 471; 78 L. T. 494; 46 W. R. 536.

(*g*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 7.

(*h*) *Ibid.* s. 9.

gage, although more than 12 years may have elapsed since the time when the right to bring such action accrued (*i*).

No action lies to recover any sum of money secured by any mortgage, or otherwise charged or payable out of any land or rent, but within 12 years next after the present right to receive such money has accrued to some person capable of giving a discharge for it, or within 12 years next after the last payment of interest in respect of it (*k*). This limitation of 12 years applies to the remedy on the covenant as well as to the remedy against the land, and that whether or not the mortgage and covenant are contained in the same deed (*l*); but it is otherwise where a simple contract debt is charged on land, in which case the period of 6 years fixed by the Limitation Act, 1623 (*m*) still applies (*n*).

When the money due upon a mortgage has been paid to a mortgagee, but no reconveyance has been executed, the mortgagor becomes, from the date of such payment, a tenant at will to the mortgagee, and the legal estate of the mortgagee is extinguished by 13 years' adverse possession of the mortgagor (*o*).

The fact that any sum of money or legacy, or any rent or interest is secured upon land by an express trust, does not give the *cestui que trust* any further time than he would have if no such trust existed (*p*).

The mortgagor is barred and loses his equity of redemption after 12 years from the time when the mortgagee took possession (*q*). The time is not extended by any disability of the mortgagor (*r*). When it operates, the statute practi-

(*i*) 7 Will. 4 & 1 Vict. c. 28; 37 & 38 Vict. c. 57, s. 8; *Harlock* v. *Ashberry*, 19 Ch. D. 539; 51 L. J. Ch. 394; 46 L. T. 356; 30 W. R. 327.
(*k*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.
(*l*) *Sutton* v. *Sutton*, 22 Ch. D. 511; 52 L. J. Ch. 333; 48 L. T. 95; 31 W. R. 369; *Fearnside* v. *Flint*, 22 Ch. D. 579; 52 L. J. Ch. 479; 48 L. T 154; 31 W. R. 318.
(*m*) 21 Jac. 1, c. 16.
(*n*) *Barnes* v. *Glenton*, [1899] 1 Q. B. 885; 68 L. J. Q. B. 502; 80 L. T. 606; 47 W. R. 435.
(*o*) Real Property Limitation Act, 1837 (7 Will. 4 & 1 Vict. c. 28); 37 & 38 Vict. c. 57, s. 9; *Sands* to *Thompson*, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397.
(*p*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 7.
(*q*) *Ibid.* s. 2.
(*r*) *Forster* v. *Patterson*, 17 Ch. D. 132; 50 L. J. Ch. 603; 44 L. T. 465; 29 W. R. 463.

cally transfers the estate from the former owner to the person whose possession has barred his right (*s*), but not as against other persons (*t*); or perhaps where the mortgage is an equitable one (*u*).

The statute does not begin to run in favour of an express trustee, or anyone claiming under him otherwise than for value against a *cestui que trust*, unless and until the land or rent has been conveyed to a purchaser for value (*x*); and no lapse of time enables a *cestui que trust* to obtain a statutory title against his express trustee (*y*).

Actions for breach of trust, where the claim is not founded on any fraud or fraudulent breach of trust, and where the action is not to recover trust property retained by the trustee, are barred after 6 years from the time the interest of the beneficiary becomes an interest in possession (*z*).

The only disabilities recognized by the Statutes of Limitation are infancy, coverture, lunacy, idiotcy, and unsoundness of mind; and in the case of a married woman's separate estate, coverture is not a disability.

Where a person was under disability at the time when his right of entry or action accrued, he may (notwithstanding the period of 12 years or 6 years, during which he might have brought his action had he not been under any disability, has expired) enforce his claim within 6 years after he has ceased to be under any disability; or if such person die before ceasing to be under disability, the person claiming after him may bring his action within 6 years of such death (*a*). But no further time is allowed by reason of the disability of any person other than the person to whom the right first accrued (*b*).

Even a person under disability is not allowed more than 30 years from the time his right of action accrued, though

(*s*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34.
(*t*) *Dalton* v. *Fitzgerald*, [1897] 2 Ch. 86, at p. 89; 66 L. J. Ch. 604; 76 L. T. 700; 45 W. R. 685.
(*u*) *Re Goodman and Hills' Contract* (Kekewich, J., 31st July, 1900), not reported.
(*x*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25.
(*y*) *Ibid.* s. 7.
(*z*) Trustee Act, 1888 (51 & 52 Vict. c. 59).
(*a*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 3.
(*b*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 18.

he may have remained under one or more disabilities throughout the whole of that period (*c*).

An acknowledgment of the title of a person entitled, signed by the person in possession, and given to the first-mentioned person or his agent before the prescribed period has expired, has the effect of stopping the running of the statute, and the right of the person entitled is in all cases deemed to have first accrued only at the time when the last of such acknowledgments was given (*d*). An acknowledgment given after the prescribed period has expired has no effect (*e*). Nor has, it seems, an acknowledgment by one of two trustees and executors against the wishes of the other (*f*).

Where concealed fraud exists, time does not, except in favour of a *bonâ fide* purchaser for value without notice of the fraud, begin to run until the time when such fraud is or might, with reasonable diligence, have been discovered (*g*).

In the case of a rentcharge the statute begins to run from the time when the rent was last received, and not from the time when the right to receive it first accrued (*h*).

In the case of an advowson the period within which it can be recovered is three consecutive incumbencies if they together amount to 60 years or more, or 100 years if the three consecutive incumbencies exceed that period (*i*).

When trustees who were originally mortgagees acquire a title to land mortgaged under the Real Property Limitation Acts, they hold it in trust for sale, but if the mortgage money was originally capital money arising under the Settled Land Acts, 1882 to 1890, the tenant for life may require the property to be conveyed to the uses of the settlement (*j*).

(*c*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 5.
(*d*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 14.
(*e*) *Sanders* v. *Sanders*, 19 Ch. D. 373, at p. 379; 51 L. J. Ch. 276; 45 L. T. 637.
(*f*) *Astbury* v. *Astbury*, [1898] 2 Ch. 111; 67 L. J. Ch. 471; 78 L. T. 494; 46 W. R. 536.
(*g*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 26.
(*h*) *Ibid.* s. 5; *De Beavoir* v. *Owen*, 5 Ex. 166; 19 L. J. Ex. 177.
(*i*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 30, 33.
(*j*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 9.

Judgment debts, whether or not charged upon land (*k*), are barred after 12 years (*l*), as also are legacies, whether the executor has assented or not (*m*).

Specialty debts are barred after 20 years; debts under awards not by specialty and fines due in respect of copyhold estates after 6 years (*n*). Where the lord of a manor is entitled to an arbitrary fine on the admittance of a tenant to copyhold, the 6 years' period of limitation fixed by the statute begins to run from the time of admittance, and not merely from the assessment and demand by the lord (*o*).

Requisitions.

1. *Was not any reconveyance executed when the mortgage of , 19 , was paid off? If not, and the fact that such payment was made upwards of* 13 *years ago is relied on, the purchaser must be supplied with a statutory declaration by the vendor showing that no payment has been made or acknowledgment given during the last* 12 *years.*

2. *As the deed with which the title commences was executed by a tenant in tail, but was not enrolled, it could only operate to convey to the purchaser an estate for the life of the tenant in tail. If the purchaser is to accept a statutory title, the vendor must show that the persons entitled to the estate on the death of the tenant in tail have, subsequently to his death, had their rights barred by the Real Property Limitation Acts.*

3. *The legal estate in the premises sold appears to have long been outstanding in A. B. as trustee. As the Statutes of Limitations have no application to such a case as this, A. B. or his legal personal representative, or such other person as the trust estate is now vested in, must be a party to the conveyance.*

(*k*) *Hebblethwaite* v. *Peever*, [1892] 1 Q. B. 124; 40 W. R. 318; *Jay* v. *Johnstone*, [1893] 1 Q. B. 189; 62 L. J. Q. B. 126; 68 L. T. 129; 41 W. R. 161; 57 J. P. 309; 4 R. 196.

(*l*) Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.

(*m*) *Re Davis, Evans* v. *Moore*, [1891] 3 Ch. 119; 61 L. J. Ch. 85; 65 L. T. 128; 39 W. R. 627; Real Property Limitation Act, 1874, s. 4.

(*n*) 3 & 4 Will. 4, c. 42, s. 3.

(*o*) *Monckton* v. *Payne*, [1899] 2 Q. B. 603; 68 L. J. Q. B. 951; 81 L. T. 204; 48 W. R. 44.

LIMITATION, WORDS OF.

See ENTAIL—FEE SIMPLE.

LIMITED OWNERS.

See SETTLED LAND.

LIS PENDENS.

See ACTION—SEARCHES.

LIVING.

See ADVOWSONS.

LOCKE KING'S ACTS.

See LIEN—MORTGAGES—VENDOR AND PURCHASER, BANKRUPTCY AND DEATH OF, BEFORE COMPLETION.

LONG TERMS.

See LEASEHOLD PROPERTY.

LOST TITLE DEEDS.

It sometimes happens that one of the deeds forming part of a title adduced cannot be found; if it is not a recent deed, this is usually of little consequence, provided the circumstances do not raise any presumption that it contains

anything which would prejudicially affect the title. Where, however, the recent title deeds are missing, care should be taken by a purchaser to obtain proper evidence of their contents and execution, and of the circumstances under which they were lost.

Even though the greater part of the title deeds be missing, the loss may not be a fatal objection to the title of a vendor if he can deliver over deeds containing recitals of such missing deeds or copies which would be evidence (*p*); but in such a case the vendor, in the absence of agreement by condition of sale or otherwise to the contrary, must furnish the purchaser with the means of showing what were the contents of the deeds, and of proving that they were duly executed, and this even where the deeds are accidentally destroyed by fire or lost after the contract is made (*q*). Evidence should also be required of uninterrupted possession and enjoyment of the property by the vendor and his predecessors for as long a period as possible, and a bond of indemnity should be insisted upon (*r*).

If the mortgagee of property, the equity of redemption of which is sold, has lost the mortgage deed, the purchaser will, nevertheless be compelled to pay the money secured upon having a reconveyance and an indemnity against the loss of the deed (*s*).

Requisitions.

1. *What evidence does the vendor offer of the contents and execution of the indenture of , 19 , stated to be lost, and of the circumstances under which the loss occurred?*

2. *Having regard to the fact that the deeds stated to be lost include the recent title deeds and the conveyance to the vendor* [*or, the whole of the title deeds are*

(*p*) *Prosser* v. *Watts*, 6 Madd. 59; 22 R. R. 238; *Doe* d. *Rogers* v. *Brooks*, 3 Ad. & E. 513; *Gillett* v. *Abbott*, 2 Jur. 300; 7 Ad. & E. 783; 3 N. & P. 24; 1 W. W. & H. 89; *Harvey* v. *Phillips*, 2 Atk. 541.

(*q*) *Halifax Commercial Bank, Ltd. and Wood*, 79 L. T. 536; 47 W. R. 194; W. N. (1898) 174; *Bryant* v. *Busk*, 4 Russ. 1; 28 R. R. 1.

(*r*) See and adapt Forms, Appendices C. and D., *post*, pp. 471 and 473.

(*s*) *Stokoe* v. *Robson*, 19 Ves. jun. 385; 3 Ves. & B. 51.

stated to be lost; or as case may be], *the purchaser will require evidence* (a) *of their contents and due execution;* (b) *of the circumstances under which the loss occurred;* (c) *of at least* [*according to circumstances, but not less than* 12] *years' undisturbed possession by the vendor and his predecessors. The vendor must also enter into a bond of indemnity to the purchaser.*

LUNATICS.

See INSANITY.

MARKET GARDENS.

See AGRICULTURAL HOLDINGS.

MARRIAGE, RESTRAINT ON.

Conditions in general restraint of marriage of an unmarried person, whether male or female, are against public policy and void, but this rule does not extend to particular restraints, such as marriage with a particular person, or at a particular time, or without consent (*t*); nor does it extend to the second marriage of either a man or woman, as to which such a condition is valid, whether the person imposing it is the first husband or wife or a stranger (*u*).

If, for the purpose of providing for a person while unmarried, there is a limitation until marriage and then over, such gift over is good (*x*).

(*t*) *Yonge* v. *Furse*, 26 L. J. Ch. 352; 29 L. T. (O. S.) 34; 3 Jur. (N. S.) 603; 5 W. R. 394; 8 De G. M. & G. 756; *Harvey* v. *Aston*, 1 Atk. 361; *Jenner* v. *Turner*, 16 Ch. D. 188; 50 L. J. Ch. 161; 43 L. T. 468; 29 W. R. 99; *Perrin* v. *Lyon*, 9 East, 170; 9 R. R. 520; *Scott* v. *Tyler*, 2 B. C. C. 431; 2 Dick. 712; *Haughton* v. *Haughton*, 1 Moll. 611.

(*u*) *Evans* v. *Rosser*, 2 H. & M. 190; *Newton* v. *Marsden*, 2 J. & H. 356; *Allen* v. *Jackson*, 1 Ch. D. 399; 45 L. J. Ch. 310; 33 L. T. 713; 24 W. R. 306.

(*x*) *Jones* v *Jones*, 13 Sim. 561.

Requisition.

The consent of A. B. to the marriage of the mortgagor must be proved in order to show that no forfeiture has taken place under the terms of the testator's will.

MARRIAGES.

See BIRTHS, MARRIAGES AND DEATHS—DIVORCE.

MARRIED WOMEN.

(1) As to property of women married, and whose title accrued, prior to 1883, where the property is not separate estate.

The husband and wife must both join in conveying the wife's freeholds or any interest in them, and the deed must be acknowledged by the wife.

An order of the Court may, however, in certain cases be obtained to dispense with the concurrence of the husband (*y*), and when such an order has been made a conveyance by the wife is valid, but does not deprive the husband of his Common Law rights by reason of the coverture (*z*).

On birth of issue capable of inheriting, the husband becomes entitled to an estate by the curtesy in his wife's freeholds, whether her estate is legal or equitable.

Husband and wife can together convey the wife's interest in copyholds (*a*); such conveyance is effected by a joint surrender by husband and wife in respect of which the wife is separately examined before the steward of the manor (*b*),

(*y*) Fines and Recoveries Act (3 & 4 Will. 4, c. 74), s. 91.
(*z*) *Fowke* v. *Draycott*, 29 Ch. D. 996; 54 L. J. Ch. 977; 52 L. T. 890; 33 W. R. 701.
(*a*) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 77, 90.
(*b*) *Ibid.* s. 90.

or in the case of equitable estates, in the same manner as freeholds (*c*).

Freeholds and copyholds which are held by a married woman as bare trustee have, since the 6th August, 1874, been capable of being conveyed or surrendered in the same way as if she were a *feme sole* (*d*).

Leasehold property to which a married woman is entitled at law, as distinguished from equity, can, if it is or may possibly become vested in the wife during the coverture, be disposed of by the husband in his lifetime, but not by will. The consent of the wife is not necessary. If it is not possible for the leaseholds to vest in the wife during coverture, her interest can only, since the 31st December, 1833, be conveyed to a purchaser or mortgagee by a deed duly acknowledged in which her husband concurs (*e*).

In the conveyance of equitable interests in chattels real, a deed duly acknowledged should always be employed, as, otherwise, the wife's equity to a settlement may be set up as against a purchaser, even though her interest be an interest in possession, and she concurs in the deed (*f*).

If the husband survives, the wife's leaseholds belong to him by survivorship without taking out letters of administration; but if he dies in his wife's lifetime without having disposed of them, they vest absolutely in the wife by survivorship, and that notwithstanding any charge thereon which the husband may have purported to make.

Contingent, executory, and future interests, and possibilities coupled with an interest, in hereditaments of any tenure, and rights of entry, whether immediate or future, vested or contingent, have, since the 30th September, 1845, been capable of being disposed of by a married woman by deed acknowledged (*g*); and a married woman has, in like manner, had power to disclaim any estate or interest in hereditaments of any tenure (*h*).

(*c*) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77.
(*d*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 6; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 16.
(*e*) Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 77.
(*f*) *Hanson* v. *Keating*, 14 L. J. Ch. 13; 8 Jur. 949; 4 Ha. 1.
(*g*) 8 & 9 Vict. c. 106, s. 6.
(*h*) *Ibid.* s. 7.

Choses in action to which a married woman is entitled cannot, in general, be assigned so as to bind the wife in case the husband dies before they are reduced into possession (*i*); and equitable choses in action are further liable to the wife's equity to a settlement if reduced into possession during the joint lives of the husband and wife. But if the chose in action is reversionary and is not settled upon the wife by her marriage settlement or agreement for a settlement, it can, since the 31st December, 1857, be disposed of by a deed in which her husband concurs duly acknowledged by the wife (*k*). If the chose in action is a mortgage debt secured upon land of any tenure, it may, whether reversionary or not, be disposed of by the husband and wife by deed acknowledged in the usual way (*l*).

A married woman could not dispose by will of property not being her separate estate.

(2) As to property of women married, and whose title accrued, prior to 1883, where the property is separate estate.

A married woman, prior to the 1st January, 1883, could not at law (as distinguished from equity) hold any property for her separate use. Courts of Equity, however, permitted her to hold and dispose of, *inter vivos* or by will, the equitable interest in property limited to her for her separate use in the same manner as if she were a *feme sole*.

In cases where the legal estate in property held for the separate use of a married woman is outstanding, the concurrence of the trustee in whom it is vested is, of course, necessary to convey the legal interest; but where the legal estate is not outstanding, it is conveyed in the same way as it would have been if the property were limited to the married woman without any indication that she was to take it for her separate use (*m*).

(*i*) *Prole* v. *Soady*, L. R. 3 Ch. 220; 37 L. J. Ch. 246; 16 W. R. 445.
(*k*) Married Women's Reversionary Interests Act, 1857 (20 & 21 Vict. c. 57).
(*l*) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74); *Williams* v. *Cooke*, 4 Giff. 343; *Miller* v. *Collins*, [1896] 1 Ch. 573; 65 L. J. Ch. 353; 74 L. T. 122; 44 W. R. 466.
(*m*) See (1), *supra*

The Married Women's Property Act, 1870 (*n*), which came into operation on the 9th August, 1870, does not affect the law as above stated. It merely directs that the separate earnings of a married woman shall be deemed property settled to her separate use, and provides, in the case of a woman married on or after the 9th August, 1870, that any sum not exceeding 200*l.* coming to her under any deed or will, or any sum, whether it exceeds 200*l.* or not (*o*), to which she becomes entitled as next of kin of an intestate, and the rents and profits during her life, but not the fee simple (*p*), of any freehold or copyhold property to which she becomes entitled as heiress or co-heiress of an intestate, are to belong to her for her separate use.

(3) As to property of women married, or whose titles have accrued, after 1882.

The Married Women's Property Act, 1882 (*q*), enables a woman, whenever married, to hold and dispose of the legal as well as the equitable interest in all property to which she becomes beneficially entitled after the 31st December, 1882, in the same way as if she were a *feme sole*. It also allows a woman married after that date to hold and dispose of the legal and equitable interest in all her beneficial property whenever acquired, including estates held by her as mortgagee (*r*). The Act was held not to apply to property where the purchaser had notice that the married woman was not beneficially entitled but held as trustee for someone else (*s*) : If, however, there is no such notice the husband of a married woman who has advanced money held on joint account need not concur in a transfer, nor need the conveyance be acknowledged by the married woman (*t*).

(*n*) 33 & 34 Vict. 93.

(*o*) *Re Voss, King* v. *Voss*, 13 Ch. D. 504; 42 L. T. 78; 28 W. R. 565.

(*p*) *Johnson* v. *Johnson*, 35 Ch. D. 345; 56 L. J. Ch. 326; 56 L. T. 163; 35 W. R. 329.

(*q*) 45 & 46 Vict. c. 75.

(*r*) *Re Brooke and Fremlin's Contract*, [1898] 1 Ch. 647; 67 L. J. Ch. 272; 78 L. T. 416; 46 W. R. 442; *Re Howgate and Osborn's Contract*, [1902] 1 Ch. 451; 71 L. J. Ch. 279; 86 L. T. 180.

(*s*) *Re Harkness and Allsopp's Contract*, [1896] 2 Ch. 358; 65 L. J. Ch. 726; 74 L. T. 652; 44 W. R. 683.

(*t*) *Re West and Hardy's Contract*, [1904] 1 Ch. 145; 73 L. J. Ch. 91; 89 L. T. 579; 52 W. R. 188.

And now by the Married Women's Property Act, 1907 (*u*), a married woman is able without the concurrence of her husband to dispose of, or join in disposing of, real and personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a *feme sole*. The section enacting this operates to render valid and confirm all such dispositions made after the 31st December, 1882, but where any title or right has been acquired through or with the concurrence of the husband before the commencement of the Act of 1907 that title or right prevails over any title or right which would otherwise be rendered valid by the section (*v*).

Although a married woman is entitled to property for her separate use, or under the Married Women's Property Act, 1882 (*x*), she may, nevertheless, be restrained from anticipating it, and thus be prevented from making a good title to a purchaser; but such a restraint does not affect her right to dispose by will of her separate estate, whether legal or equitable.

In consequence of the 19th section of the Act of 1882, which provides that the Act shall not affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, of the property of any married woman, *ante*-nuptial or *post*-nuptial must be construed as though the Act had not been passed. In consequence of this the concurrence of the wife in the settlement was not necessary in any case where her concurrence would not have been necessary prior to the year 1883. But a settlement made by a husband alone on or after the 1st January, 1908, is not valid unless executed by the wife, if she is of full age, or confirmed by her after she attains full age (*y*).

(4) Generally.

The Court will not admit, for the purpose of making valid a trust which would otherwise be void for remoteness, evidence that a woman is past the age of child-bearing, but

(*u*) 7 Edw. 7, c. 18.
(*v*) *Ibid.* s. 1.
(*x*) 45 & 46 Vict. c. 75.
(*y*) Married Women's Property Act, 1907, s. 2.

as a matter of convenience of administration it will allow payment out of a fund on evidence of such fact, and the age is generally fixed at about 54 (z).

See ACKNOWLEDGMENT—ANTICIPATION, RESTRAINT AGAINST — COVENANTS — DISCLAIMER — DIVORCE — ENTAIL —ESTOPPEL—JUDICIAL SEPARATION AND PROTECTION ORDERS—SETTLED LAND—TENANTS BY ENTIRETIES—WILLS.

Requisitions.

1. *As Mrs. B. was married and became entitled to the property prior to* 1883, *her husband must join, and the deed must be acknowledged by her.*

2. *The vendor's husband must concur in the conveyance to the purchaser in order to pass the legal estate in the leaseholds to which the vendor became entitled in* 1880.

3. *Mrs. C.'s will, whereby she devised to the vendor all her real estate, could not operate upon the legal estate of Whiteacre, as she became entitled thereto for her separate use prior to the Act of* 1882. *Her heir-at-law, or other the person in whom the legal estate in the premises is now vested, must be made a party to the conveyance to the purchaser.*

MERGER.

Subject to the qualifications mentioned hereafter, when two estates in the same land meet in the same person without the intervention of any other estate, or where the two estates are freehold with the intervention only of an estate for years, merger takes place. Thus, an estate for a term of years of whatever length will merge in a life estate. An estate tail does not, however, merge in the fee simple expectant on its determination, although both estates become vested in the same person.

(z) *Re Dawson, Johnson* v. *Hill*, 39 Ch. D. 155; 57 L. J. Ch. 1061; 59 L. T. 725; 37 W. R. 51.

When two estates become vested by operation of law in the same person in different rights, merger did not occur, and although at common law merger took place if the union was the result of the action of a party, yet relief would be given in equity to a person equitably entitled to the estate thus merged. And now, since the 31st October, 1875, there has been no merger by operation of law only of an estate the beneficial interest in which would not be deemed to be merged or extinguished in equity (*a*).

In considering whether or not merger has taken place, the Court is guided by the intention, and in the absence of intention expressed in the instrument in question or by parol the Court looks to the benefit of the person in whom the two estates become vested (*b*).

If the owner of an estate creates an estate or interest in it, and his own estate is afterwards merged, the estate or interest so created is not affected by the merger.

Where the reversion expectant on a lease of any tenements or hereditaments of any tenure, is, after the 31st December, 1844, surrendered or merged, the estate which confers, as against the tenant under the same lease, the next vested right to the same tenements or hereditaments is (to the extent and for the purpose of preserving such incidents to and obligations on the same reversion as, but for the surrender or merger, would have subsisted) deemed the reversion expectant on the same lease (*c*).

Where the purchaser of an estate pays off an incumbrance upon it, the incumbrance paid off is merged, unless the contrary intention appears (*d*).

Another kind of merger of practical importance in conveyancing is the merger of the contract for sale in the conveyance. If the conveyance covers the whole ground of the contract, the contract is superseded completely, but if it is clear from the terms of the contract that it was intended

(*a*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (4).

(*b*) *Ingle* v. *Vaughan Jenkins*, [1900] 2 Ch. 368; 69 L. J. Ch. 618; 83 L. T. 155; 48 W. R. 684.

(*c*) 7 & 8 Vict. c. 76, s. 12; Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 9.

(*d*) *Toulmin* v. *Steere*, 3 Mer. 210; *Adams* v. *Angell*, 5 Ch. D. 634; 46 L. J. Ch. 352; 36 L. T. 334; 25 W. R. 139.

to go on after the conveyance, then to that extent it will not be superseded by the conveyance (*e*). There is no danger of anything in the contract being superseded by the conveyance, which the contract itself provides shall not be so superseded, but in other cases where some rights are intended to be preserved, which are not expressly referred to in the conveyance, a memorandum should either before or at the time of the conveyance be signed by the parties, specifying the extent to which the preliminary contract is not intended to be superseded.

Requisition.

1. *The purchase of the lease for* 99 *years created by the indenture of* , 1 , *appears to have been by J. S. the sub-lessee of the property under the lease for* 21 *years from the of* , 19 ; *that term will, therefore, have merged. Who is now in possession of the property, and what is the nature of the tenancy? Who are the present ground landlords, and to whom is the rent usually paid?*

2. *The purchaser does not propose to embody the temporary provision of clause of the contract for sale in his conveyance, and will accordingly submit a short draft memorandum for approval providing that this clause is not to be superseded by the conveyance.*

MINES AND MINERALS.

The mines and minerals lying under the surface are included in the word "land" used in its ordinary sense (*f*); the maxim being *Cujus est solum, ejus est usque ad cœlum et ad inferos.* To this rule there are, however, certain exceptions and qualifications :—(1) The gold and silver got from gold and silver mines belong to the Crown (*g*). (2) In the

(*e*) *Palmer* v. *Johnson*, 13 Q. B. D. 351; 53 L. J. Q. B. 348; 51 L. T. 211; 33 W. R. 36.

(*f*) 2 Blackstone, p. 17.

(*g*) *Att.-Gen.* v. *Morgan*, [1891] 1 Ch. 432; 60 L. J. Ch. 126; 64 L. T. 403; 39 W. R. 324.

case of mines worked for copper, tin, iron, or lead, the Crown is entitled to take the ores which contain gold or silver at fixed prices (*h*). (3) In the case of copyhold land, the lord is entitled to the minerals, but cannot, unless by custom of the manor, come upon the land to work them (*i*). (4) Where copyhold land is enfranchised under the Copyhold Acts, the right of the lord to the minerals remains vested in him (*k*). (5) Occasionally the lord of the manor is entitled by local custom to the minerals under freeholds (*l*). (6) Railway or waterwork companies taking land under statutory powers do not acquire the minerals except by express grant (*m*).

The right to work coal includes the right to let down the surface, as this is a necessary consequence of the working (*n*).

The word "minerals" in a legal document or statute *primâ facie* includes such substances as gravel and sand (*o*), and a reservation of minerals *primâ facie* includes every substance which could be got from underneath the surface of the earth for the purpose of profit (*p*).

Different principles apply to cases arising out of a statutory reservation of minerals such as under the Railway Clauses Consolidation Act, 1845 (*q*), and in such a case, although china-clay underlying the surface is a mineral for the purposes of the Act (*r*), ordinary clay forming the surface or subsoil has been held not to be a mineral (*s*).

(*h*) 1 Will. & M. c. 30; 5 Will. & M. c. 6.
(*i*) *Att.-Gen.* v. *Tomline*, 5 Ch. D. 750; 46 L. J. Ch. 654; 36 L. T. 684; 25 W. R. 803.
(*k*) 4 & 5 Vict. c. 35, s. 82; 15 & 16 Vict. c. 51, s. 48; 57 & 58 Vict. c. 46, s. 23.
(*l*) *Curtis* v. *Daniel*, 10 East, 273.
(*m*) 8 & 9 Vict. c. 20, s. 77; 10 & 11 Vict. c. 17, s. 18.
(*n*) *Welldon* v. *Butterley Co., Ltd.*, [1920] 1 Ch. 130; 88 L. J. Ch. 496; 121 L. T. 535.
(*o*) *Scott* v. *Midland Railway and Great Northern Railway*, [1901] 1 Q. B. 317; 70 L. J. K. B. 228; 83 L. T. 737; 49 W. R. 318; 65 J. P. 135.
(*p*) *Hext* v. *Gill*, L. R. 7 Ch. 699; 41 L. J. Ch. 761; 27 L. T. 291; 20 W. R. 957.
(*q*) 8 & 9 Vict. c. 20, s. 77.
(*r*) *Great Western Railway Co.* v. *Carpalla United China Clay Co., Ltd.*, 77 L. J. Ch. 673.
(*s*) *Great Western Railway Co.* v. *Blades*, [1901] 2 Ch. 624; 70 L. J. Ch. 847; 85 L. T. 308

Trustees, unless expressly empowered by the instrument creating the trust, could not formerly sell the surface of land separately from minerals; but since the 6th August, 1862, they have had power to do so with the sanction of the Court (*t*). This power, prior to the 1st January, 1894, was held to extend to mortgagees (*u*); and as the power provided by the Trustee Act 1893 (*x*), replacing the earlier statute, did not appear to apply to mortgagees, the omission was remedied by the Trustee Act (1893) Amendment Act, 1894 (*y*).

A mortgagee has also power to sell the mines or minerals apart from the surface (*z*). An executor or administrator has no authority without the sanction of the Court to sell the surface of land without the minerals (*a*).

If a contract be entered into to sell freeholds without stating that the minerals do not belong to the vendor and will not be conveyed, the purchaser may repudiate it; specific performance of the contract will not be ordered even if the vendor, after the repudiation, obtains a title to the minerals (*b*), though repudiation is not, it would seem, of itself an answer to a claim for damages if the vendor, before the date fixed for completion, was in a position to make a good title to the whole property (*c*).

On a sale, exchange or partition under the Settled Land Acts any restriction with respect to mines and minerals or their working may be imposed (*d*). The surface and minerals, with or without wayleaves, may be separately dealt with (*e*), and an exchange or partition may be made

(*t*) 25 & 26 Vict. c. 108, s. 2; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 44; Trustee Act, 1894 (57 & 58 Vict. c. 10), s. 3.
(*u*) *Re Beaumont's Mortgage Trusts*, L. R. 12 Eq. 86; 40 L. J. Ch. 400; 19 W. R. 767.
(*x*) 56 & 57 Vict. c. 53, s. 44.
(*y*) 57 & 58 Vict. c. 10, s. 3.
(*z*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 4.
(*a*) Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 44 (1) and 50, *Re Wickstead's Trusts*, [1921] 2 Ch. 184.
(*b*) *Bellamy* v. *Debenham*, [1891] 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257.
(*c*) *Belamy* v. *Debenham*, [1891] 1 Ch. 412, at pp. 420, 422; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257.
(*d*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 4 (6).
(*e*) *Ibid.* s. 17 (1)

subject to and in consideration of the reservation of an undivided share in mines or minerals (*f*). Capital money arising under the Settled Land Acts may be invested in purchasing land in fee, or copyhold land or land held for terms of 60 years or more unexpired, subject or not to exception or reservation of mines or minerals, or of powers relative to working them (*g*), and in purchasing mines and minerals convenient to be held or worked with the settled land (*h*).

A person having the powers of a tenant for life under the Settled Land Acts may grant a mining lease for 60 years (*i*); but such lease is to be by deed and to take effect in possession not later than twelve months after its date (*k*), and must reserve the best rent that can reasonably be obtained (*l*), and contain a covenant by the lessee for payment of rent, and a condition of re-entry on non-payment within a time not exceeding 30 days (*m*); a counterpart must be executed by the lessor and delivered to the tenant for life, of which execution and delivery the execution of the lease by the tenant for life is sufficient evidence (*n*). Statements contained in, or indorsements on, a lease signed by the tenant for life of any matters of fact or calculations under the Act in relation to the lease are sufficient evidence in favour of the lessee and those claiming under him (*o*).

The rent of mining leases under the Settled Land Acts may be ascertained by or varied according to the acreage worked, the quantity of minerals gotten, made merchantable, converted, carried away or disposed of (*p*), and may vary with the price of minerals (*q*). A fixed or minimum rent may be made payable with or without power to the lessee to make up short workings (*r*). A lease may be

(*f*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 17 (2).
(*g*) *Ibid.* s. 21 (vii).
(*h*) *Ibid.* s. 21 (viii).
(*i*) *Ibid.* s. 6 (ii).
(*k*) *Ibid.* s. 7 (1).
(*l*) *Ibid.* s. 7 (2).
(*m*) *Ibid.* s. 7 (3).
(*n*) *Ibid.* s. 7 (4).
(*o*) *Ibid.* s. 7 (5).
(*p*) *Ibid.* s. 9 (1) (i).
(*q*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 8.
(*r*) 45 & 46 Vict. c. 38, s. 9 (1) (ii).

granted partly in consideration of the lessee agreeing to execute an improvement authorized by the Acts in connection with mining purposes (*s*).

Under a mining lease made under the powers contained in the Settled Land Acts, where the tenant for life is impeachable for waste, three-fourths, and where he is not so impeachable, one-fourth, of the rents of mines or minerals leased must be set aside as capital moneys under the Acts (*t*).

It appears doubtful whether the lessee may pay the whole rent to the tenant for life, leaving him to pay the amount applicable as capital to the trustees or into Court, or whether it is incumbent on the lessee to pay it to the trustees or into Court himself : The latter would appear to be the case if a form of summons for payment into Court given in the Appendix to the Settled Land Act Rules, 1882 (*u*), is any indication of the intention of the Act, and until otherwise decided it is best to assume that this is the proper course. But there is nothing in the Settled Land Acts or elsewhere to prevent a tenant for life, whether or not impeachable for waste, exercising his common law right of leasing mines already opened for any term not exceeding his own life and taking the whole rent reserved.

The provisions of the Conveyancing Act, 1881, requiring a notice to be given before a landlord can take advantage of a proviso for re-entry on breach of covenant, do not apply, in the case of a mining lease, to a covenant or condition for allowing the lessor to have access for inspection, or to a condition for forfeiture on the bankruptcy of the lessee, or the taking in execution of his interest (*x*).

Neither a mortgagor nor mortgagee in possession can, without special power contained in the mortgage deed (*y*), grant a mining lease.

See LEASEHOLD PROPERTY.

(*s*) 45 & 46 Vict. c. 38, s. 9 (2).
(*t*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 11.
(*u*) *Ibid.*, s. 22 (1); Settled Land Act Rules, 1882, App. Form X.
(*x*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 14; Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 4 (2), (3).
(*y*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18 (14).

Requisition.

It appears from the abstract of title that the land was formerly copyhold, and that on enfranchisement the lord retained the minerals; as the contract did not except minerals, the concurrence of the lord must be obtained [or *the purchaser, therefore, is not bound by the contract, which he hereby repudiates*].

MORTGAGED ESTATES, DEVOLUTION OF, UPON DEATH OF MORTGAGEE.

Formerly, the mortgagee's estates in mortgaged property could be devised by will, and, in the absence of such devise, descended in the same manner as a beneficial interest to the heir-at-law, who, however, held it subject to the rights of the persons beneficially interested in the money secured. Mortgaged estates, like trust estates, passed by a devise in general terms, unless an intention to the contrary could be collected from the will (*z*).

Between the 1st January and the 30th September, 1845, inclusive, the legal personal representative of a deceased mortgagee had power, on receipt of the mortgage money, to convey the legal estate : provided that (1) such legal personal representative was entitled to the mortgage money; (2) possession had not been taken; and (3) no action or suit was pending (*a*) : For some years after September, 1845, no such power existed; but subsequently the legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee had been admitted, might, if the mortgagee died between the 7th August, 1874, and the 31st December, 1881, inclusive, on payment of all sums secured by the mortgage, convey or

(*z*) Braybroke (*Lord*) v. *Inskip*, 8 Ves. jun. 417; 7 R. R. 106; *Bainbridge* v. *Ashburton* (*Lord*), 6 L. J. Ex. Eq. 73; 2 Y. & C. Ex. 347.

(*a*) 7 & 8 Vict. c. 76, s. 9; 8 & 9 Vict. c. 106, s. 1.

surrender the mortgaged estate, whether the mortgage was in form an assurance subject to redemption or an assurance upon trust (*b*); but he could not transfer a mortgage of a freehold estate (*c*) or exercise the power of sale (*d*).

On the death of mortgagees after 1881, mortgaged estates of inheritance, or limited to the heir as special occupant, vested in any person solely, devolve on his legal personal representatives like a chattel real, notwithstanding any testamentary disposition he may have made (*e*); but since the 16th September, 1887, the provisions of the Conveyancing Act on this point do not apply to copyholds vested in the tenant on the court rolls of any manor (*f*). The effect of this is, that copyhold and customary land to which a mortgagee has been admitted, devolved on his death, on or after the 16th September, 1887, in the same manner as before 1882; but as regards deaths after the 31st December, 1881, and before the 16th September, 1887, the legal estate in such copyholds which, under the Conveyancing Act, 1881, had, on the death of the mortgagee, devolved upon his personal representatives, was, on the 16th September, 1887, divested from them, and vested in his customary heir or devisee; but the validity of any disposition of the property made by the personal representatives before that date is unaffected (*g*).

Mortgaged leaseholds upon a death, whenever occurring, devolve upon the legal personal representatives of the mortgagee.

Where a mortgage is made to two or more persons as joint tenants, upon the death of one of them his estate devolves upon the remaining mortgagee or mortgagees.

See MORTGAGES.

(*b*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 4.
(*c*) *Re Spradbery's Mortgage*, 14 Ch. D. 514; 49 L. J. Ch. 623; 43 L. T. 82; 28 W. R. 822; *Re Brook's Mortgage*, 25 W. R. 841.
(*d*) *Re White*, 29 W. R. 820.
(*e*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.
(*f*) The Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45; The Copyhold Act, 1894 (57 & 58 Vict. c. 46), s. 88.
(*g*) *Re Mills' Trusts*, 37 Ch. D. 312; 40 Ch. D. 14; 57 L. J. Ch. 466; 58 L. T. 620; 60 L. T. 442; 36 W. R. 393; 37 W. R. 81.

Requisitions.

1. *The devise of the legal estate in the mortgaged premises by A. B. did not vest such estate in the devisee, inasmuch as A. B. died since the Conveyancing Act*, 1881, *came into operation. The legal estate is therefore vested in the legal personal representatives under sect.* 30, *and they must join in the conveyance.*

2. *A. B. having been admitted tenant of the property, sect.* 30 *of the Conveyancing Act does not apply, and the legal estate passed on his death intestate, after the* 15*th September*, 1887, *to his customary heir, who must join in the assurance to the purchaser.*

MORTGAGES.

A general charge for value upon all the existing property of the mortgagor is not void for uncertainty if the property can be ascertained at the time the mortgage is enforced (*h*).

Powers of sale by mortgagees may be either express or statutory. They will not, independently of agreement or statute, be implied in equity, and when expressed they are strictly construed.

Several questions suggest themselves on considering a title depending upon the exercise of a mortgagee's power of sale, *e.g.*, To whom is the power of sale given ? Has any event happened to authorize the sale ? Does any money remain owing on the security ? Whether or not these questions, or any of them, are material to the title shown depends upon the date of the mortgage.

Every mortgage made by deed after the 27th August, 1860, impliedly contains a power to sell, or concur with any other person in selling, the mortgaged property, unless a contrary intention is stated in the deed (*i*).

(*h*) *Re Kelcey, Tyson* v. *Kelcey*, [1899] 2 Ch. 530; 68 L. J. Ch. 742; 81 L. T. 354; 48 W. R. 59.

(*i*) Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 11; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 19.

In mortgages executed after the 27th August, 1860, and before the 1st January, 1882, such power did not arise until the expiration of one year after the principal had become payable, or some interest had been in arrear for six months, or after any omission to pay any premium on any insurance, and in either case six months' notice in writing to the mortgagor was required (*k*). In mortgages after the 31st December, 1881, the power arises when the mortgage money has become due and is exercisable only after notice requiring payment of the mortgage money has been served on the mortgagor, and default has been made in payment for three months after such service, or when some interest under the mortgage is in arrear for two months, or there has been a breach of some provision in the mortgage, or in the Conveyancing Act, 1881, other than a covenant for payment of mortgage money or interest (*l*). On a sale in professed exercise of either of these statutory powers, the title of a purchaser cannot be impeached on the ground that no case has arisen to authorize a sale (*m*), but this did not preclude a person who has contracted to purchase from a mortgagee purporting to sell under his statutory power of sale, from inquiring whether the vendor was in a position to exercise the power; nor from proving *aliunde* that the power was improperly exercised (*n*). It has, however, now been declared by statute that the purchaser is not and never has been bound or concerned to inquire whether a case has arisen for the exercise of the power of sale (*o*), but possibly the statutory protection would not extend to an irregularity which could not have been waived.

It must be observed that the statutory powers are implied only in mortgages by deed : so that, in the case of equitable charges created otherwise than by deed, an express power is still required.

(*k*) 23 & 24 Vict. c. 145, s. 11.
(*l*) 44 & 45 Vict. c. 41, s. 20.
(*m*) 23 & 24 Vict. c. 145, s. 13; 44 & 45 Vict. c. 41, s. 21 (2).
(*n*) *Life Interest and Reversionary Securities Corporation* v. *Hand-in-Hand Fire and Life Insurance Society*, [1898] 2 Ch. 230; 67 L. J. Ch. 548; 78 L. T. 708; 46 W. R. 668.
(*o*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 5.

It is sufficient for the notice calling in the mortgage to require payment at the expiration of three calendar months, and the three months' default entitling the mortgagee to exercise the power of sale begins to run in this case from the service of the notice and not from the date fixed for payment (*p*).

An express power of sale was usually given to the mortgagees, "or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns," and this is still usual in cases where an express power is required. Any deviation from this form should be looked upon with suspicion. Thus, if the power be merely given to the mortgagees, it is conceived it could not be exercised by the survivors or survivor, and if given to a sole mortgagee without mentioning his executors or administrators, it could only be executed by the mortgagee during his life.

The power of sale is not assignable; so that a power of sale given to a person without mentioning his assigns cannot be assigned unless the deed shows with sufficient clearness that it was intended that it should be. "There must be some words of limitation which, on a fair and proper construction of the whole instrument, show the intention that the power should be exercised by some other person than its original donee" (*q*). Where, therefore, a member of a building society mortgaged property to the trustees of the society, and the mortgage deed empowered "the trustees or trustee for the time being of the society" in case of default to sell the mortgaged property, and the mortgage was afterwards, without the concurrence of the mortgagor, transferred to R., who was not a member of the society, it was held that (assuming, but not deciding, the validity of the transfer), upon the construction of the deed, the power of sale could not be exercised by any person other

(*p*) *Barker* v. *Illingworth* [1908] 2 Ch. 20; 77 L. J. Ch. 561; 99 L. T. 187.

(*q*) Chitty, L.J., in *Re Rumney and Smith's Contract*, [1897] 2 Ch. 351, at p. 360; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678.

than the trustees or trustee for the time being of the society (*r*).

If the power of sale be expressed to be exercisable by the person or persons to whom the mortgage money shall for the time being be payable, or if the mortgage be made by deed on or after the 28th August, 1860 (*s*), the person to whom the mortgage money is for the time being payable is the proper person to exercise the express or statutory power of sale.

Where mortgages contain express powers of sale, purchasers are, in general, protected by a clause in the mortgage deed from inquiring whether any event has happened to authorize a sale, and purchasers of property sold under statutory powers are, as stated above, also protected (*t*). But on a purchase of property sold by a mortgagee under a mortgage to which the statutory powers do not extend, and which, even if containing an express power, does not contain a clause relieving a purchaser from inquiry, the purchaser must insist upon evidence of the happening of the event which authorizes the sale. Neither in the case of the statutory nor the usual express power will a purchaser be protected where he knows of an irregularity which cannot have been waived (*u*). In a case, therefore, in which an express power contained a proviso that it should not be executed until the mortgagee had given notice to the mortgagor to pay off the debt, and default had been made for three months, the mortgagor having covenanted to pay six months after the date of the mortgage, and the mortgagee had seven months after that date sold to the defendant, it was held that, three months not having elapsed since default in payment of the mortgage debt, the proviso had not been complied with, and the sale was invalid, and that the pur-

(*r*) *Re Rumney and Smith's Contract*, [1897] 2 Ch. 351; 66 L. J. Ch. 641; 76 L. T. 800; 45 W. R. 678.

(*s*) Lord Cranworth's Act, (23 & 24 Vict. c. 145), s. 11; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 21 (4).

(*t*) Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 13; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 21 (2).

(*u*) *Selwyn* v. *Garfit*, 38 Ch. D. 273; 57 L. J. Ch. 609; 59 L. T. 233; 36 W. R. 513; *Re Thompson and Holt*, 44 Ch. D. 492; 59 L. J. Ch. 651; 62 L. T. 651; 38 W. R. 524.

chaser, who must be taken to know that the proviso had not been complied with, was not protected by the protection clause (*x*). It will, however, be observed that in this case the restriction on the sale without the stipulated notice was not dependent on no interest being due : Therefore, upon a sale under the statutory power within nine months, the purchaser would be protected if, as is usual, interest had become due two months prior to the sale, or the mortgage deed contained provision for some act, such as insurance, to be done by the mortgagor, which he had omitted.

A power of sale is given solely to secure the mortgage debt, and ceases to exist as soon as the mortgage is paid off. A purchaser should in all cases see that he is protected by agreement of the mortgagor or by statute from the necessity to inquire whether any money remains owing upon the security. As to what words are sufficient to protect a purchaser, see *Dicker* v. *Angerstein* (*y*). Under mortgages made by deed after the 31st December, 1881, the purchaser is protected by statute (*z*). There does not appear to be any provision in Lord Cranworth's Act so protecting a purchaser : therefore, on sales of property under powers in mortgages executed prior to the 1st January, 1882, or which, whenever executed, are not made by deed, a purchaser must insist upon evidence that some money remains owing on the security, unless proper provisions are contained in the instrument relieving purchasers from doing so.

In express powers of sale it is usually provided that the mortgagees "or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns," should be able to give a receipt for the purchase-money. Some such power is necessary, otherwise it would be necessary for the purchaser to inquire into the exact state of the mortgage debt, and to pay the mortgage money to the mortgagee, and the balance, if any, to the mort-

(*x*) *Selwyn* v. *Garfit*, 38 Ch. D. 273; 57 L. J. Ch. 609; 59 L. T. 233; 36 W. R. 513.
(*y*) 3 Ch. D. 600; 45 L. J. Ch. 754; 24 W. R. 844.
(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 22 (1).

gagor. Sometimes, instead of being given as above, the power is given to the person or persons exercising the power of sale, or to the person or persons entitled to receive and give a discharge for the mortgage money.

Persons who exercise the statutory power of sale given by Lord Cranworth's Act (*a*), which applies to mortgages executed by deed on or after 28th August, 1860, and before the 1st January, 1882, can give a receipt for the purchase-money; while in the case of mortgages made by deed after the 31st December, 1881, the receipt of a mortgagee or person deriving title under him is a sufficient discharge for money arising under the power of sale conferred by the Conveyancing Act, 1881, as it is also for other moneys arising under the security (*e.g.*, insurance money) (*b*).

The only obligation incumbent on a mortgagee selling under and in pursuance of a power of sale is that he should act in good faith (*c*). He cannot, however, after the usual order nisi for foreclosure and before the final order, exercise his power without the leave of the Court; but the power is suspended only, not extinguished, and a *bonâ fide* purchaser without notice may get a good title under it (*d*).

There is usually no difficulty in discovering the person who is entitled to the mortgage money. The right, in general, passes with the mortgage security, and a transfer *inter vivos* of the security effects a transfer of the debt (*e*). Consequently, no notice is necessary to complete the transferee's title to the debt as against the title of a subsequent transferee; it is, however, usually given so as to prevent the mortgagor making payments on account of the mortgage debt and interest to the transferor. On the death of a mortgagee, the right to the debt, being personal property, passes to his legal personal representative.

Money received by a mortgagee under his security is

(*a*) 23 & 24 Vict. c. 145, s. 12.
(*b*) 44 & 45 Vict. c. 41, s. 22 (1); s. 2 (vi.).
(*c*) *Kennedy* v. *De Trafford*, [1897] A. C. 180; 66 L. J. Ch. 413; 76 L. T. 427; 45 W. R. 671.
(*d*) *Stevens* v. *Theatres, Ltd.*, [1903] 1 Ch. 857; 72 L. J. Ch. 764; 88 L. T. 458; 51 W. R. 585.
(*e*) *Jones* v. *Gibbons*, 9 Ves. jun. 407; 7 R. R. 247.

applicable as follows—(1) costs; (2) principal and interest; and (3) to mortgagor (*f*).

The costs which a mortgagee is entitled to add to his security are those incurred in asserting and defending his rights and in protecting and preserving the mortgaged property. He will not be allowed the costs of a transfer made behind the back of a mortgagor who has not been called upon to repay the principal (*g*).

Where an estate is limited by a mortgage to two or more persons as mortgagees, without words showing how they are to take, they are joint tenants at law, and the legal right to sue on the covenant passes to the survivors or survivor. In equity, however, they are presumed to be tenants in common unless there are words in the instrument to rebut this presumption: For this purpose all mortgages executed before the 1st January, 1882, where there are more mortgagees than one, must, in order to enable the survivor to give a receipt, contain a declaration that the mortgage money belongs to the mortgagees on a joint account, and this is sufficient to protect a purchaser who has not actual notice that the joint account has been severed, or that the mortgagees are in fact tenants in common, though as between the mortgagees themselves such declaration is not conclusive (*h*).

A power to the survivors or survivor to give a receipt for the mortgage money seems to be sufficient notwithstanding notice that the mortgagees are tenants in common, and in this case there would appear to be no necessity for a joint account clause.

As a general rule the concurrence of each of joint mortgagees in a receipt for the mortgage money is necessary in their lifetime (*i*) to make a good title even where the security is joint in form (*k*), and such concurrence should

(*f*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 21 (3), 22 (2).
(*g*) *Re Radcliffe*, 22 Beav. 201.
(*h*) *Re Jackson, Smith* v. *Sibthorpe*, 34 Ch. D. 732; 56 L. J. Ch. 593; 56 L. T. 562; 35 W. R. 646.
(*i*) *Hall* v. *Franck*, 11 Beav. 519; *Matson* v. *Dennis*, 10 Jur. (N. S.) 461; 12 W. R. 926.
(*k*) *Morley* v. *Bird*, 3 Ves. at p. 631.

always be required (*l*). It is, however, to be observed that no authority is given for the *dictum* in *Powell* v. *Brodhurst*, and that in *Hall* v. *Franck* the trust on which the money was held was disclosed, and in *Matson* v. *Dennis* the money was not trust money. It therefore seems fairly open to argument that the rule does not apply to cases where the debt is in fact a joint one, *e.g.*, one due under a mortgage containing a joint account clause either express or statutory (*m*).

A joint account clause, or a clause enabling the survivors or survivor of two or more mortgagees to sell, is not sufficient to throw upon the purchaser an obligation to inquire whether or not the mortgagees are trustees, and he should therefore abstain from making any such inquiry (*n*); but this does not apply where the existence of the settlement is disclosed (*o*).

By a statute passed in 1844 extending to deeds, acts, or things executed or done, and to estates, rights, and interests created after the 31st December, 1844, the *bonâ fide* payment to and the receipt of the survivors or survivor of two or more mortgagees was made to effectually discharge the person making the payment, unless the contrary was expressly declared by the instrument creating the security (*p*). This was afterwards repealed as from the 1st October, 1845 (*q*).

As regards mortgages executed after the 31st December, 1881, to persons not expressed to take in shares, no joint account clause is necessary, and the receipt of the survivors or survivor is a complete discharge notwithstanding notice to the payer of a severance of the joint account (*r*).

(*l*) *Powell* v. *Brodhurst*, [1901] 2 Ch. 160; 70 L. J. Ch. 587; 84 L. T. 620; 49 W. R. 532.
(*m*) *Steeds* v. *Steeds*, 22 Q. B. D. 537, at p. 541; 58 L. J. Q. B. 302; 60 L. T. 318; 37 W. R. 378.
(*n*) *Re Harman and Uxbridge and Rickmansworth Rail. Co.*, 24 Ch. D. 720, at p. 726; 52 L. J. Ch. 808; 49 L. T. 130; 31 W. R. 857.
(*o*) *Re Blaiberg and Abrahams*, [1899] 2 Ch. 340; 68 L. J. Ch. 578; 81 L. T. 75; 47 W. R. 634.
(*p*) 7 & 8 Vict. c. 76, ss. 10, 13.
(*q*) 8 & 9 Vict. c. 106, s. 1.
(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 61.

If there be no joint account clause or power to the survivor to give receipts, and the mortgage is executed before 1882, a purchaser should insist upon the concurrence of the legal personal representatives of the deceased mortgagees, unless satisfactory evidence is produced that the mortgage money was held upon a joint account, or that the joint mortgagees are trustees, so that the survivors or survivor can give a receipt whenever the trust was created (*s*).

A mortgagee can, as a rule, convey the legal estate only in the following cases :—

(1) Where such estate is vested in him.

(2) Where the mortgagor is entitled to the legal estate, and has given the mortgagee a power of attorney to convey it. This power is revoked by the death of the mortgagor, unless given on or after the 1st January, 1883, and expressed to be irrevocable (*t*), and can only be exercised by the person to whom it is given, unless it expressly or by necessary implication empowers him to appoint another person to do so.

(3) Where the mortgagor is entitled to the legal estate, and the mortgagee sells under the power contained in Lord Cranworth's Act, 1860. This does not apply to copyholds (*u*). The power contained in this Act even enables a mortgagee by sub-demise to dispose of the whole lease vested in the mortgagor at the time of the mortgage (*x*). It is repealed by the Conveyancing Act, 1881, but that does not affect the powers under instruments executed before 1882 (*y*).

(4) Possibly where, the legal estate having been comprised in the mortgage, the person entitled to receive and give a discharge for the mortgage money, but who

(*s*) Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 20, 22, replacing Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 36, 38.
(*t*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 8.
(*u*) 23 & 24 Vict. c. 145, s. 15.
(*x*) *Hiatt* v. *Hillman*, 25 L. T. 55; 19 W. R. 694.
(*y*) 44 & 45 Vict. c. 41, s. 71; *Re Solomon and Meagher's Contract*, 40 Ch. D. 508; 58 L. J. Ch. 339; 60 L. T. 487; 37 W. R. 331.

has not the legal estate, sells under the power contained in the Conveyancing Act, 1881. This does not apply to copyholds (*z*), nor enable an equitable mortgagee to convey the legal estate vested in the mortgagor (*a*), and a purchaser is not advised to rely upon this construction of the Act, until it has been confirmed by judicial decision.

Prior to the Conveyancing Act, 1881, a mortgagor, on the one hand, could not make a lease of the mortgaged premises binding on the mortgagee; and, on the other hand, a mortgagee could not, except under a power for the purpose given by the mortgagor, grant leases binding on the mortgagor; but now a person in possession of any land, either as mortgagor or mortgagee, under a mortgage made after 31st December, 1881, can grant leases of the land mortgaged for—(1) an agricultural or occupation lease for any term not exceeding twenty-one years; (2) a building lease not exceeding ninety-nine years (*b*). Every such lease must reserve the best rent that can reasonably be obtained, and must be made to take effect within one year from its date; no fine must be taken (*c*). There must be inserted in the lease a covenant by the lessee for payment of rent, and a condition of re-entry on the rent not being paid within a time specified, not exceeding thirty days (*d*). A counterpart of the lease must be executed and delivered to the lessee, and, if the lessor is a mortgagor, must be delivered to the mortgagee first in priority within a calendar month after the making of the lease. The execution of such a lease by the lessor is, in favour of the lessee and all persons claiming under him, sufficient evidence of the execution and delivery of the counterpart to the lessor, and the lessee is not concerned to see that the counterpart is delivered to the mortgagee first in priority (*e*). A contract to make or accept a lease may be enforced against every person on

(*z*) 44 & 45 Vict. c. 41, ss. 19, 21 (1).
(*a*) *Re Hodson and Howe's Contract*, 35 Ch. D. 668; 56 L. J. Ch. 755; 56 L. T. 837; 35 W. R. 553.
(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 18 (1), (2), (3).
(*c*) *Ibid.* s. 18 (5), (6).
(*d*) *Ibid.* s. 18 (7).
(*e*) *Ibid.* s. 18 (8), (11).

whom the lease, if granted, would be binding (*f*); and all the provisions with regard to a lease extend and apply, as far as circumstances admit, to any letting or to an agreement, whether in writing or not. A building lease must be made in consideration of the lessee having erected, or agreeing to erect, within five years, new or additional buildings, or having improved or repaired buildings, or agreeing within that time to improve or repair buildings, and a peppercorn or other rent less than the rent ultimately payable may be reserved for the first five years or any shorter time (*g*). All these provisions may be varied or excluded by the mortgage deed or by agreement in writing, and may be applied by such an agreement to mortgages made before the 1st January, 1882 (*h*).

It has become the usual practice to exclude the mortgagor's power of leasing, and it is not infrequent for the mortgagor to lease notwithstanding he has no power. Under these circumstances a tenant of the mortgagor has no title as against the mortgagee.

A mortgagor or mortgagee who is entitled to lease is also entitled to accept surrenders of leases (*i*).

A tenant for life of the equity of redemption has had power, under the Settled Land Acts, since the 31st of December, 1882, where the mortgage was made since 1881, to grant the leases mentioned above (*k*).

It is a long-established principle, and one which still exists notwithstanding the repeal of the usury laws, that the Courts will not permit a person, under the colour of a mortgage, to obtain a collateral advantage not belonging or appurtenant to the contract of mortgage, or, as it is called, to clog the redemption with an agreement (*l*); but the Court will, in taking the account in a redemption action, allow to the mortgagee sums actually deducted by him for com-

(*f*) Conveyancing Act (44 & 45 Vict. c. 41), s. 18 (12).
(*g*) *Ibid.* s. 18 (9), (10).
(*h*) *Ibid.* s. 18 (13), (14), (16).
(*i*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 3.
(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 6; Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7.
(*l*) *Rice* v. *Noakes*, [1900] 1 Ch. 213; [1900] 2 Ch. 445; 69 L. J. Ch. 635; 82 L. T. 784; 48 W. R. 629.

missions or bonus at the time of making the advances, provided the deductions were made as part of the mortgage contract under a bargain deliberately entered into by the parties while on equal terms, and knowing perfectly well what they were doing, and without any improper pressure, unfair dealing, or undue influence on the part of the mortgagee, the Court treating the transaction in such case as amounting, in fact, to the payment of the whole amount of the advance to the mortgagor, and the return of a certain part of it to the mortgagee as a consideration for the accommodation (*m*).

A stipulation in a mortgage deed that the loan shall continue for a fixed term is valid, provided of course that the mortgage is entered into between parties on equal terms without any undue influence, as is a covenant, limited to the continuance of the security, to deal exclusively with the mortgagee for beer sold on the mortgaged premises (*n*).

Where a mortgage of a chose in action is in the usual form a power of attorney to enable the mortgagee to sue in the mortgagor's name has since the 31st October, 1875, been unnecessary (*o*), if notice in writing of the assignment has been given to the debtor.

Formerly, in consequence of the primary liability of the residuary personal estate of a deceased person to pay his debts, the heir and devisee were entitled to have the realty of the deceased exonerated from any mortgage debt which the latter was personally liable to pay ; but where any person has died after the 31st December, 1854, entitled to any freehold or copyhold estate which, at the time of his death, is charged with the payment of any mortgage, and such person has not signified any contrary intention, the heir or devisee takes the land charged with the mortgage debt (*p*),

(*m*) *Mainland* v. *Upjohn*, 41 Ch. D. 126; 58 L. J. Ch. 361; 60 L. T. 614; 37 W. R. 411; *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307; 67 L. J. Ch. 540; 79 L. T. 201; 47 W. R. 84; *Bradley* v. *Carritt*, [1903] A. C. 253; 72 L. J. K. B. 471; 88 L. T. 633; 51 W. R. 636.

(*n*) *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307; 67 L. J. Ch. 540; 79 L. T. 201; 47 W. R. 84.

(*o*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (6); *Durham* v. *Robertson*, [1898] 1 Q. B. 765; 67 L. J. Q. B. 484; 78 L. T. 438.

(*p*) 17 & 18 Vict. c. 113, s. 1.

and in the case of the will of any person who dies after the 31st December, 1867, a general direction that the testator's debts shall be paid out of his personal estate is not deemed a "contrary intention" (*q*). These provisions were subsequently extended to the leasehold estates of a testator or intestate who dies after the 31st December, 1877; and in the case of a person dying after that date, a "contrary intention" is not deemed to be signified by a charge or direction for the payment of debts out of the residuary real and personal estate or residuary real estate (*r*). The effect of these acts, on a collective devise to the same set of persons, is *primâ facie* to throw the aggregate charges on the aggregate land in exoneration of the testator's personal estate (*s*).

Under the Courts (Emergency Powers) Act, 1914 (*t*), a mortgagee (other than a mortgagee in possession) whose mortgage was made before the 4th August, 1914, cannot exercise his power of sale without obtaining an order of the Court under the Act (*u*). It is conceived that a purchaser is bound to see that the order has been obtained, or else to obtain the concurrence of the mortgagor in the conveyance. The latter is not so satisfactory as an order of the Court, which would bind undisclosed incumbrancers of whom the purchaser has no notice. The Courts (Emergency Powers) Acts expire one year (*x*) after the termination of the Great War. This termination was fixed by Order in Council pursuant to the Termination of the Present War (Definition) Act, 1918 (*y*), at midnight on the 31st August, 1921.

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (*z*), generally applies to a house or part of a house, let as a separate dwelling, where either the annual

(*q*) 30 & 31 Vict. c. 69, s. 1.
(*r*) 40 & 41 Vict. c. 34, s. 1.
(*s*) *Re Baron Kensington, Earl of Longford* v. *Baron Kensington*, [1902] 1 Ch. 203; 71 L. J. Ch. 170; 85 L. T. 577; 50 W. R. 201.
(*t*) 4 & 5 Geo. 5, c. 78, s. 1.
(*u*) *Braybrooke* v. *Whaley*, [1919] 1 K. B. 435; 88 L. J. K. B. 577; 120 L. T. 281; 63 Sol. Jo. 373.
(*x*) War Emergency Laws (Continuance) Act, 1920, 10 Geo. 5, c. 5.
(*y*) 8 & 9 Geo. 5, c. 59.
(*z*) 10 & 11 Geo. 5, c. 17, s. 12 (2).

amount of the standard rent or the rateable value does not exceed—

(a) In the Metropolitan police district, including the City of London, £105.

(b) Elsewhere in England, £78.

The standard rent is the rent on 3rd August, 1914, if then let, or the rent at which it was previously last let before that date, or, in the case of a dwelling-house first let after that date, the rent at which it was first let, but when the rent is less than two-thirds of the rateable value the Act applies as if no such tenancy had ever existed (*a*).

The Act has no application to a house erected after, or in course of erection on, 2nd April, 1919 (*b*).

The Act has no application to an equitable charge or to any mortgage made on or after 2nd July, 1920.

Where the rateable value of the dwelling-houses to which the Act applies which are comprised in a mortgage is less than one-tenth of the rateable value of the whole land, the Act does not apply to that mortgage. In other cases where houses within the Act are included with other land in a mortgage provision is made for apportionment (*c*).

The interest on any mortgage within the Act may not be increased to more than 6½ per cent. and may not exceed in the case of mortgages in existence on 3rd August, 1914, the rate then charged, or, in the case of mortgages made after that date, the original rate of interest, by more than 1 per cent. (*d*).

A mortgage within the Act cannot be called in, or the rights of foreclosure or sale exercised, so long as interest is paid within twenty-one days after it is due and the covenants performed and the property kept in a proper state of repair, and all interest and instalments of principal recoverable under any prior encumbrance are paid (*e*). But this provision does not affect any power of sale exercisable

(*a*) 10 & 11 Geo. 5, c. 17, s. 12 (7).
(*b*) *Ibid.* s. 12 (9).
(*c*) *Ibid.* s. 12 (5).
(*d*) *Ibid.* s. 4.
(*e*) *Ibid.* s. 7.

by a mortgagee who was a mortgagee in possession on 25th March, 1920, nor does it apply where the mortgagor consents or where the principal is repayable by periodical instalments extending over a term of not less than ten years, and the County Court has power to authorize a mortgage of leasehold property to be called in when the security is seriously diminishing in value.

The Act applied to business premises as though the term "dwelling-house" included reference to any such premises, but this application expired on the 24th June, 1921 (*f*).

The whole Act is intended only as a temporary measure and expires (unless renewed) on the 24th June, 1923 (*g*).

From the point of view of the subject of investigation of title, the important question arises, "Is a purchaser protected in the case where a mortgagee sells property to which the Act applies?" This point is not expressly provided for, and the only safe course will accordingly be to insist on evidence that the Act has no application, or that interest is more than twenty-one days in arrear, or some other breach of covenant has taken place, or to require the concurrence or consent of the mortgagor.

As to mortgages and charges by companies, see DEBENTURES.

See CONSOLIDATION OF MORTGAGES—EQUITABLE MORTGAGES—TACKING OF MORTGAGES.

Requisitions.

1. *The debt of £ secured by the mortgage of , 19 , must be paid off out of the purchase-money, and the mortgagee must join in the conveyance.*

2. *What is due to the mortgagee, and how much of the consideration money is to be applied towards each mortgage?*

3. *The power of sale contained in the mortgage of 1st July, 1860, does not appear to be exercisable by*

(*f*) 10 & 11 Geo. 5, c. 17, s. 13
(*g*) *Ibid.* s. 19.

the assigns of the mortgagee. The mortgagor must therefore concur in the conveyance to the purchaser.

4. *Having regard to the unsatisfactory nature of the power of sale contained in the mortgage, evidence must be furnished to the purchaser showing that some event has happened which authorizes the sale.*

5. *Evidence must be produced showing that some money still remains owing upon the security of the mortgage. The power of sale is not such as to make this requisition unnecessary.*

6. *How does the mortgagee propose to make a title to the last day of the term? If by exercising the power of attorney contained in the mortgage of* 1920, *evidence must be produced showing that the mortgagor is still alive.*

7. *The mortgage of* , 1881, *does not contain a joint account clause. This being so, the legal personal representative of A. B., the deceased mortgagee, must concur in the conveyance to the purchaser. What, if any, portion of the purchase-money is to be received by him?*

8. *The money due on mortgage of the property being expressed in the indenture of* , 19 , *to be held subject to the trusts of the settlement referred to therein, such settlement must be produced for the inspection of the purchaser's solicitor in order that he may satisfy himself that it contains nothing to prevent the mortgagee giving a receipt, and a statutory acknowledgment of the purchaser's right to production of such settlement must be given.*

9. *What is the date of the settlement by A. B., the mortgagor, of the equity of redemption of the premises included in the mortgage proposed to be transferred by C. D.? If it is subsequent to the indenture of transfer and further charge to C. D., it cannot, of course, affect the title; but if, as would appear, it was prior to such last-mentioned indenture, though subsequent to the original mortgage, A. B. had no power, unless reserved to him in the settlement, to encumber the*

equity with any further sum by the indenture of , 19 , and in that case the security offered is to that extent defective.

10. *Has any order under the Courts (Emergency Powers) Act, 1914, been obtained? If so, the same should be abstracted. If not, the mortgagor must concur in the conveyance?*

11. *The property sold is a dwelling-house to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, would appear to apply, and the purchaser must accordingly be satisfied that the mortgagee is entitled to exercise his power of sale or else the mortgagor must concur in the conveyance for the purpose of consenting to the sale.*

MORTMAIN AND CHARITABLE USES.

The subjects of mortmain and charitable uses are generally dealt with together; there is, however, no necessary connection between a corporation on the one hand, and a charity on the other hand, and as dealing together with similar, but distinct, subjects is liable to cause a confusion of ideas, they are hereunder treated separately.

(i) Mortmain.

At common law a corporation had power to take and hold land, but since Magna Charta (*h*) restrictions have been imposed with a view to prevent corporations buying land, and thus depriving the feudal lords of the services they would otherwise be entitled to. The Mortmain Acts apply to corporations sole as well as aggregate (*i*), and leaseholds, if for more than ninety-nine years, were said to be within the Acts (*j*). The former Acts on the subject were consolidated by the Mortmain and Charitable Uses Act, 1888 (*k*).

(*h*) 25 Edw. 1, c. 36.
(*i*) Viner's Abr. Mortmain (B. 1), p. 614.
(*j*) *Ibid.* pp. 20—22.
(*k*) 51 & 52 Vict. c. 42.

This Act provides that if land is assured to a corporation otherwise than under the authority of a licence from the Crown, or of a statute for the time being in force, it shall be forfeited to the Crown or mesne lord (*l*). Land in the Act includes tenements and hereditaments corporeal and incorporeal, of whatsoever tenure and any estate and interest in land (*m*). This wide definition appears to have the effect of subjecting corporations, as from the 13th August, 1888, to the further disability of not being able, without licence or statutory authority, to take any estate or interest in lands; but since the 4th August, 1891, this definition has been repealed and replaced by a new one, and land now only includes tenements and hereditaments, corporeal and incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land (*n*). Alienations in mortmain are not void but only voidable, and if the Crown and mesne lords waive their rights, the corporation can hold the land.

The following corporations amongst others are authorized by statute to hold land :—(1) Joint stock companies incorporated under the Companies Acts (*o*); (2) companies incorporated by special Acts containing similar provisions; (3) the Governors of Queen Anne's Bounty (*p*); (4) incorporated charities (*q*).

Corporations holding money in trust for public or charitable purposes may invest money on real security authorized by their trusts without being deemed to have acquired land in mortmain, and no contract for or conveyance of any interest in land made *bonâ fide* for the purpose only of such security is to be deemed void, but if the equity of redemption of the premises comprised in such security becomes liable to foreclosure or otherwise barred or released, it is thenceforth to be held in trust for sale and to be sold accordingly, and if any decree is made for the redemp-

(*l*) 51 & 52 Vict. c. 42, s. 1.
(*m*) *Ibid.* s. 10 (iii).
(*n*) 54 & 55 Vict. c. 73, s. 3.
(*o*) Companies Act, 1862 (25 & 26 Vict. c. 89), s. 6; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 16.
(*p*) 2 & 3 Anne, c. 20.
(*q*) 18 & 19 Vict. c. 124, s. 35; 33 & 34 Vict. c. 34.

tion or enforcing of the security, it shall direct a sale in default of redemption, and not a foreclosure of such premises (*r*).

Assurances to corporations for the purposes only of public parks, elementary schools, public museums, or dwellings for the working classes, are valid provided they satisfy the statutory requirements as to charitable uses referred to below (*s*).

(ii) Charitable Uses.

The alienation of land for charitable purposes is subject to restrictions which were originally imposed by the Charitable Uses Act, 1735, commonly, but inaccurately, called the Statute of Mortmain (*t*), and are now embodied in the Mortmain and Charitable Uses Act, 1888 (*u*), under which statute every assurance of land, with the exceptions referred to hereunder, to or for the benefit of any charitable uses, and every assurance of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses, must be made in accordance with the requirements of the Act, and unless so made every such assurance is void (*x*). Land in this Act had originally the widest possible meaning and included all estates and interests in law, money charged on land, and any personalty savouring of the realty, but this meaning has now been altered, and after the 4th August, 1891, the word is only to include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land (*y*).

The requirements of the Act, so far as they relate to land, are that the assurance—

(1) If of land, not being land of copyhold or customary tenure, must be by deed, executed in the presence of at least two witnesses (*z*), or by registered dis-

(*r*) The Charitable Funds Investment Act, 1870 (33 & 34 Vict. c. 34).
(*s*) 51 & 52 Vict. c. 42, s. 6; 53 & 54 Vict. c. 16.
(*t*) 9 Geo. 2, c. 36.
(*u*) 51 & 52 Vict. c. 42.
(*x*) *Ibid.* s. 2.
(*y*) 54 & 55 Vict. c. 73, s. 3.
(*z*) 51 & 52 Vict. c. 42, s. 4 (6).

position under the Land Transfer Act, 1875, or any Act amending it (*a*).

(2) Unless made in good faith for full and valuable consideration, must be made at least 12 months before the death of the assuror (*b*).

(3) Must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof (*c*).

(4) Must be without any power of revocation, reservation, condition, or provision for the benefit of the assuror, or of any person claiming under him, except that the instrument may contain any of the following provisions if reserved to the persons claiming under the assuror as well as the assuror himself : (a) the grant or reservation of a peppercorn or other nominal rent; (b) the grant or reservation of mines or minerals; (c) the grant or reservation of any easements; (d) covenants or provisions as to the erection, repair, position, or descriptions of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land; (e) a right of re-entry on non-payment of any such rent or on breach of any such covenant or provision; (f) any stipulation of the like nature for the benefit of the assuror, or of any person claiming under him (*d*).

(5) Must, unless made by registered disposition under the Land Transfer Act, 1875, or any Act amending it, within six months after execution be enrolled in the Central Office of the Supreme Court (*e*).

The above provisions do not apply to—

(1) Assurances by deed for a public park, elementary school, or public museum made for full and valuable

(*a*) 51 & 52 Vict. c. 42, s. 9.
(*b*) *Ibid.* s. 4 (7).
(*c*) *Ibid.* s. 4 (2).
(*d*) *Ibid.* s. 4 (3), (4).
(*e*) *Ibid.* ss. 4 (9), 9.

consideration, or executed not less than 12 months before the death of the assuror and enrolled in the books of the Charity Commissioners within six months after the execution of the deed (*f*).

(2) Assurances by deed to public authorities for purposes for which they are authorized to acquire land (*g*).

(3) Assurances for certain specified universities, colleges, and societies (*h*).

(4) Assurances under any statute in force at the time of the passing of the Mortmain and Charitable Uses Act, 1888 (*i*). For a complete list of statutory exemptions from the provisions of the Act of George II. still existing, see Index to the Statutes Revised, title "Mortmain."

(5) Assurances by deed for the purpose of providing dwellings for the working classes in populous places. The deed must be enrolled with the Charity Commissioners within six months after its execution (*k*).

The conveyance to other trustees or another charity of land already devoted to charitable purposes does not fall within the Acts relating to charitable uses (*l*).

Lands devised by the will of a testator dying before the 5th August, 1891, were subject to the provision referred to above, which, in effect, prohibited the gift of an interest in land by will to any charitable uses other than assurances to certain specified universities, colleges and societies, and assurances under any statute in force at the time of the passing of the Mortmain and Charitable Uses Act, 1888 (*m*). Land not exceeding twenty acres for a public park, and not exceeding two acres for a public museum, and not exceeding one acre for a school-house, and (after 24th July, 1890) not exceeding five acres for dwellings for working classes in

(*f*) 51 & 52 Vict. c. 42, s. 6.
(*g*) 55 & 56 Vict. c. 11.
(*h*) 51 & 52 Vict. c. 42, s. 7.
(*i*) 51 & 52 Vict. c. 42, s. 8.
(*k*) Working Classes Dwellings Act, 1890 (53 & 54 Vict. c. 16).
(*l*) *Walker* v. *Richardson*, 2 M. & W. 882; M. & H. 251; *Att.-Gen.* v. *Glyn*, 12 Sim. 84; *Ashton* v. *Jones*, 3 L. T. 49; 8 W. R. 633; 6 Jur. (N. S.) 970; 28 Beav. 460.
(*m*) 51 & 52 Vict. c. 42, ss. 7, 8.

populous places, was, however, a further exception; but a will containing an assurance of such land must have been executed not less than twelve months before the death of the assuror or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assuror, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator (*n*).

By the Mortmain and Charitable Uses Act, 1891, land may be devised by the wills of testators dying after the 4th August, 1891, to or for the benefit of any charitable use, but such land must be sold within one year from the death of the testator or such extended period as may be determined by the Court or judge at chambers or by the Charity Commissioners (*o*). The effect of this is to repeal section 4 of the Mortmain and Charitable Uses Act, 1888 (*p*), so far as it relates to wills (*q*). As soon as the time limited for the sale of any lands under any such assurance has expired without completion of the sale of the land, the land unsold vests forthwith in the official trustee of charity lands, and the Charity Commissioners must take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being (*r*).

The Court or judge in chambers and the Charity Commissioners have power, if satisfied that land assured by will to or for the benefit of any charitable use or proposed to be purchased out of personal estate, by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, to sanction the retention or acquisition, as the case may be, of such land (*s*).

(*n*) Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42, s. 6; 53 & 54 Vict. c. 16).
(*o*) Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), s. 5.
(*p*) 51 & 52 Vict. c. 42.
(*q*) *Re Hume, Forbes* v. *Hume*, [1895] 1 Ch. 422; 64 L. J. Ch. 267; 72 L. T. 68; 43 W. R. 291; 12 R. 101.
(*r*) Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), s. 6.
(*s*) *Ibid.* s. 8.

With certain exceptions (referred to below), trustees of charities cannot legally sell or mortgage except by authority of a statute or of an order of the Court or under a scheme legally established (*t*), or with the consent of the Charity Commissioners (*u*). The chief exceptions are :—

(a) Universities of Oxford, Cambridge, London, or Durham.

(b) Cathedrals or collegiate churches and buildings registered as places of worship and so used.

(c) Commissioners of Queen Anne's Bounty and British Museum (*x*).

(d) Friendly and benefit societies or savings banks or other institutions, establishments or societies for religious or other charitable purposes wholly maintained by voluntary contributions (*y*).

(e) Charities supported partly by voluntary contributions and partly by endowment, when the property in question may lawfully be applied as income (*z*).

(f) Educational charities in respect of which the former powers of the Charity Commissioners are now vested in the Board of Education (*a*).

Requisitions.

1. *Is the X. Society incorporated under any, and, if so, what, statute authorizing corporations registered thereunder to hold lands in mortmain? If not, the vendors must produce the licence from the Crown enabling them so to do.*

2. *How is the consent of the Charity Commissioners to the conveyance to [or by] the vendors the B. Hospital trustees shown?*

(*t*) *Re Mason's Orphanage and London and North Western Railway Co.'s Contract*, [1896] 1 Ch. 54, 596; 65 L. J. Ch. 32; 73 L. T. 465; 44 W. R. 61.

(*u*) Charitable Trusts Act, 1855 (18 & 19 Vict. c. 124), s. 29.

(*x*) *Ibid.* ss. 47 and 48.

(*y*) *Re Royal Society of London and Thompson*, 17 Ch. Div. 407; 50 L. J. Ch. 344; 44 L. T. 274; 29 W. R. 838.

(*z*) Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 62; *Re Clergy Orphan Corporation*, [1894] 3 Ch. 145; 64 L. J. Ch. 66; 71 L. T. 450; 43 W. R. 150.

(*a*) 62 & 63 Vict. c. 33, s. 2, and Orders in Council thereunder; 7 Edw. 7, c. 43, s. 2.

3. *It does not appear from the abstract that the conveyance to the trustees of A.'s Charity was enrolled in the Central Office. Was this done, and, if so, on what date?*

4. *The certificates of incorporation of the A. B. Co., Ltd., must be produced in order to show that such company was duly registered under the Companies Acts, and, therefore, capable of holding and conveying land.*

5. *The certificate of incorporation under the Building Societies Act, 1874, of the N. P. Building Society should be abstracted in chief and must be produced.*

NAME AND ARMS CLAUSE.

A name and arms clause, that is to say, a clause intended on the failure of a condition for taking and bearing a certain name and arms, to defeat an estate and to give the property over to another person, usually operates by means of a shifting use, which, on the failure of a person to whom the estate is given to adopt the name and arms specified, vests the land in the person next entitled.

Clauses of this description are construed strictly, and the limitation for cesser of the former estate and the limitation over must fit in with one another with exactness (*b*). They are generally employed in connection with the settlement of real estate. The usual form is applicable to successive limitations of estates for life and in tail, but not to a gift of the ultimate estate in fee simple, as there could be no person entitled in remainder thereafter to whom the estate could go over; and even apart from this, such a gift over would, in most cases, be void under the rule against perpetuities (*c*).

(*b*) *Musgrave* v. *Brooke*, 26 Ch. D. 792; 54 L. J. Ch. 102; 33 W. R. 211.

(*c*) *Re Catt's Trusts*, 33 L. J. Ch. 495; 10 L. T. 409; 12 W. R. 739; 10 Jur. (N. S.) 536; 4 N. R. 88; 2 H. & M. 46; *Bird* v. *Johnson*, 18 Jur. 976; 2 W. R. 692; 23 L. T. 320; *Musgrave* v. *Brooke*, 26 Ch. D. 792; 54 L J. Ch. 102; 33 W. R. 211.

In the case of an estate tail the limitation over, being in defeasance of such estate, is capable of being barred by a disentailing assurance.

On the sale of his life estate by a person entitled in remainder to an estate subject to a name and arms clause, the purchaser runs a risk of losing the estate by the neglect of the vendor to adopt the name and arms in accordance with the clause; the purchaser is under no liability to adopt them himself, but he should require that the vendor should take the name and arms in anticipation (*d*) or give a bond with sureties to secure the taking of them by the vendor.

Where a name and arms clause requires a devisee to take the testator's surname, the addition by the devisee of such surname before his own name is not, but the addition after his own name is, a compliance with the terms of the bequest (*e*).

It sometimes happens that the clause is inserted by a testator who is found never to have had any arms. In such cases it is conceived that, as the College of Heralds will not come to the rescue by granting arms to a dead man, the arms portion of the clause can be disregarded.

Requisition.

The life estate contracted to be sold is, it seems, liable to be defeated by the failure of the vendor to adopt the [*Smith*] *name and arms on the estate falling into possession. The vendor must accordingly do so before completion.*

NATURALIZATION.

See ALIENS.

(*d*) *Re Greenwood, Goodhart* v. *Woodhead*, [1902] 2 Ch. 198; 71 L. J. Ch. 579; 86 L. T. 500.

(*e*) *D'Eyncourt* v. *Gregory*, 1 Ch. D. 441; 45 L. J. Ch. 205; 24 W. R. 424; *Re Eversley, Mildmay* v. *Mildmay*, [1900] 1 Ch. 96; 69 L. J. Ch. 14; 81 L. T. 600; 48 W. R. 249.

NOTICE.

A purchaser is not, in the case of purchases whenever made in respect of which no action was pending on the 1st January, 1883, prejudicially affected by notice of any instrument, fact, or thing, unless—

(1) It is within his own knowledge or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(2) In the same transaction, with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel as such, or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent (*f*).

This does not exempt a purchaser from liability under any covenant, condition, provision, or restriction contained in any instrument under which his title is derived (*g*); but a purchaser is not affected by notice in any case where he would not formerly have been so affected (*h*).

A purchaser or lessee having notice of a deed forming part of the chain of title of his vendor or lessor has constructive notice of the contents of such deed, and is not protected from the consequences of not looking at the deed even by the most express representation on the part of the vendor or lessor that it contains no restrictive covenants or anything in any way affecting the title. A person purchasing the fee simple or taking a lease is bound to make reasonable inquiry into his vendor's or lessor's title, and cannot escape notice by neglecting or binding himself not

(*f*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3.

(*g*) *Ibid.* s. 3 (2).

(*h*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 3 (3); *Re Cousins*, 31 Ch. D. 671; 55 L. J. Ch. 662; 54 L. T. 376; 34 W. R. 393; *Re Hall & Co., Ltd.*, 37 Ch. D. 712; 57 L. J. Ch. 288; 58 L. T. 156; *Bailey* v. *Barnes*, [1894] 1 Ch. 25; 63 L. J. Ch. 73; 69 L. T. 542; 42 W. R. 66; 7 R. 9.

to look into the title, even though the law under an open contract precludes him from doing so (*i*).

Registration is not of itself notice (*k*), but if a search is made the purchaser will be presumed to have notice of what he might have discovered by making the search. It may consequently sometimes be best not to search. In Yorkshire, however, all assurances registered under the Yorkshire Registry Act, 1884 (*l*), have priority according to the date of registration, or, in the case of wills, according to the date of the death of the testator, if the will be registered within six months therefrom.

See COVENANTS—EQUITABLE ESTATES—LENGTH OF TITLE—MORTGAGES—REGISTRATION OF DEEDS AND WILLS—SETTLED LAND.

Requisition.

The purchaser having notice of [*the equitable charge for £ executed by the vendor in favour of C. D.*], *C. D. must join in the conveyance.*

OPTION.

If a purchaser of an interest in land has notice of a binding option to some other person of purchasing the land contracted to be sold, he is not bound to complete, as any such option being an interest in the land would in such case be binding upon him (*m*), but if he has no such notice and obtains the legal estate he is entitled to hold the property free from the option.

When some other person has "a first refusal" of the property the Court will, while the matter rests in *fieri*,

(*i*) *Patman* v. *Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.
(*k*) *Morecock* v. *Dickens*, Amb. 678.
(*l*) 47 & 48 Vict. c. 54.
(*m*) *London and South Western Rail. Co.* v. *Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620.

restrain the vendor from giving and the intending purchaser from accepting a conveyance of the legal estate (*n*).

A building lease, or an agreement for such lease, in pursuance of the Settled Land Acts, may contain an option to purchase to be exercised within any number of years not exceeding ten (*o*).

Options to purchase are strictly construed, and are taken *primâ facie* to be personal to the persons to whom they are given (*p*). In construing them time is considered of the essence of the contract (*q*).

Options to purchase must be confined within the limits allowed by the rule against perpetuities, that is to say, any number of lives in being, and twenty-one years after the termination of such lives, otherwise they are void (*r*) and may be disregarded by a purchaser. A proviso or covenant in a lease giving an option to purchase may be good as binding the land in the hands of the heirs or assigns, provided it does not infringe the law as to perpetuities, but it does not come within 32 Hen. VIII. c. 34 so as to make the liability to perform it run with the reversion (*s*). When the benefit of an option passes with a lease it comes on the death of the lessee into the hands of his legal personal representative as part of his personal estate (*t*). In a covenant giving an option to purchase the word "assign" means the person entitled to the term, and not a mere equitable assignee, even though in possession of the premises and paying the rent (*u*).

(*n*) *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, [1900] 2 Ch. 352; [1901] 2 Ch. 37; 70 L. J. Ch. 468; 84 L. T. 436; 49 W. R. 418.
(*o*) Settled Land Act, 1889 (52 & 53 Vict. c. 36), s. 2.
(*p*) *Re Cousins, Alexander* v. *Cross*, 30 Ch. D. 203.
(*q*) *Lord Ranelagh* v. *Melton*, 2 Dr. & Sm. 278; 10 Jur. (N. S.) 1141; 34 L. J. Ch. 227; 11 L. T. 409; 13 W. R. 150; 5 N. R. 101.
(*r*) *London and South Western Rail. Co.* v. *Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620.
(*s*) *Woodall* v. *Clifton*, [1905] 2 Ch. 257; 74 L. J. Ch. 555; 93 L. T. 257; 54 W. R. 7; 21 T. L. R. 581.
(*t*) *Re Adams and the Kensington Vestry*, 27 Ch. D. 394; 54 L. J. Ch. 87; 51 L. T. 382; 32 W. R. 883.
(*u*) *Friary, Holroyd and Healey's Breweries, Ltd.* v. *Singleton*, [1899] 1 Ch. 86; 68 L. J. Ch. 13; 79 L. T. 465; 47 W. R. 93.

Requisition.

It appears from the abstract that A. B. has during his life an option of repurchasing the property contracted to be sold: Proof of the death of A. B. without having exercised this option must be furnished, or, if alive, he must join in the conveyance.

ORDER.

The terms of an order for sale must be strictly followed. Therefore, where an order had been made for sale of real estate by public auction, and an attempt had been made to so sell it but had failed, a purchaser under a contract entered into at or after a sale by auction privately held at the judge's chambers was discharged from his contract (*x*); and where an order was made in a partition suit directing inquiries, and that if it should appear that a sale would be more beneficial than a partition, and that all parties interested were parties to the suit or bound by the order, the real estate in question should be sold, and part of the property was subsequently put up for sale with the sanction of the chief clerk before the certificate was made, the purchaser was held entitled to be discharged from his contract (*y*).

All equitable interests of persons parties to the proceedings in which an order for sale is made, have always been bound by the order; consequently a petition for an order vesting in the purchaser the equity of redemption of property sold was dismissed (*z*), and now, by the Conveyancing Act, 1881 (*a*), an order of the Court under any statutory or other jurisdiction is not, as against a purchaser, to be invalidated on the ground of want of jurisdiction or con-

(*x*) *Berry* v. *Gibbons, Ex parte Lee*, L. R. 15 Eq. 150; 42 L. J. Ch. 231.
(*y*) *Powell* v. *Powell*, L. R. 10 Ch. 130; 44 L. J. Ch. 122; 31 L. T. 737; 23 W. R. 201.
(*z*) *Re Williams' Estate*, 21 L. J. Ch. 437; 5 De G. & S. 515.
(*a*) 44 & 45 Vict. c. 41, s. 70.

currence, consent, notice or service, whether the purchaser has notice of such want or not (*b*). This provision, however, does not extend to interests which, having regard to the circumstances, it appears that the Court did not intend to bind (*c*); nor to orders of the County Court (*d*). Notwithstanding these provisions of the Conveyancing Act, it is still a common practice, when an abstract discloses a sale under the Court, to supply a purchaser with information from which he can satisfy himself that all proper persons are bound. The persons bound by an order are (1) parties to the action; (2) persons served with notice under Order XVI., Rule 40; (3) persons in respect of whom orders have been obtained under Order XVI., Rules 32 and 46; (4) numerous persons as representing whom one or more persons sue or are sued under Order XVI., Rule 9; (5) *cestuis que trustent* who are represented by their trustees or executors under Order XVI., Rule 8; (6) absent parties where the Court on a compromise so directs under Order XVI., Rule 9A.

Orders of Courts are proved by the production of originals or office copies; the result of a sale under an order by an office copy of the Master's certificate; and the payment in of the purchase-money by an office copy of the Paymaster-General's certificate.

See ACTION—JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF—VESTING DECLARATIONS AND ORDERS.

Requisitions.

1. *A proper abstract of the order of* 19 , *ordering the C. D. Company to be wound up must be furnished to the purchaser, and an office copy of the order, if in the vendor's possession, should be produced.*

2. *What is the nature of the action of* Jones *v.* Davis ? *A copy of the statement of claim should be*

(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70 (1).
(*c*) *Jones* v. *Barnett*, [1899] 1 Ch. 611; (1900) 1 Ch. 370; 69 L. J. Ch. 242; 82 L. T. 37; 48 W. R. 278.
(*d*) *Re Bowling and Welby's Contract*, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 43 W. R. 417; 12 R. 218.

supplied, and the original or an office copy of the order of 19 , *for sale produced.*

3. *The order of* 19 , *appears to have been made in County Court proceedings. Section* 70 *of the Conveyancing Act,* 1881, *does not, therefore, apply, and the purchaser must be satisfied by a statutory declaration and pedigree or otherwise that all the parties having equitable interests in the property sold were parties to the action or otherwise bound by the order for sale, and that all necessary consents, &c., have been given.*

OUTGOINGS.

In the absence of stipulation to the contrary, the vendor must bear all expenses and outgoings of property sold down to the time when a good title was first shown, and also pay interest on his unpaid purchase-money, and as from that time the purchaser must bear all such expenses (*e*). These matters are, however, usually provided for by conditions.

Requisition.

All outgoings must be paid by the vendor up to the of , when a good title was first shown [*or to the date of completion according to the contract*], *and the current outgoings must be apportioned.*

OUTLAWRY.

See CONVICTS, TRAITORS AND FELONS.

(*e*) *Barsht* v. *Tagg,* [1900] 1 Ch. 231; 69 L. J. Ch. 91; 81 L. T. 777; 48 W. R. 220.

PARCELS.

The parcels should contain a description of the property conveyed in the state in which it is at the time of the execution of the deed. Where the character of the property has changed, the new should be connected with the older description : it is a mistake in such a case to merely copy the parcels from the previous documents.

In simple cases a purchaser is entitled to have a plan on his conveyance (*f*) without words qualifying the effect of the plan (*g*). This is, in fact, an instance of the rule that he is entitled to take the conveyance in his own form (*f*).

In the case of farms, it will usually be found convenient to have a plan identical with the large ordnance survey map, which is on a scale of 25.344 inches to a mile. On this scale an acre is represented on the plan as a square inch (1.0036224 square inches exactly). For large estates the smaller ordnance survey map, which is on a scale of six inches to a mile, will be sufficient. On this scale an acre is shown as .05625 square inches, and 17 7-9 acres are mapped in each square inch.

A purchaser would do well to insist upon all discrepancies which throw any doubt upon the identity of the parcels described in the various documents of title, with the property sold, being satisfactorily accounted for; and he ought in all cases to be furnished with tracings of any plans which are referred to in any of the documents of title. A study and comparison of these will frequently satisfy any doubts which the description of the property has raised. All facts or circumstances which are necessary to establish the identity of the parcels should be proved by the statutory declaration of some person well acquainted with the neighbourhood.

A condition that no further evidence of identity shall be required than what is afforded by the abstract and the

(*f*) *Re Sansom and Narbeth's Contract*, [1910] 1 Ch. 741, at p. 748; 79 L. J. Ch. 374; 102 L. T. 677; 54 S. J. 475.

(*g*) *Re Sparrow and James' Contract*, [1910] 2 Ch. 60; 79 L. J. Ch. 491.

documents abstracted does not, when the documents differ amongst themselves and from the description in the particulars of sale, preclude the purchaser from requiring further proof of identity, nor does it preclude him from having what he has bought distinguished (*h*).

Requisitions.

1. *Copies of the plans referred to in the abstract of title should be supplied in order to enable the purchaser to satisfy himself as to the identity of the premises comprised therein with the property contracted to be sold.*

2. *Some evidence must be furnished to prove that the property contracted to be sold forms part of the estate comprised in the mortgage of* , 19 .

3. *The parcels in the indenture of lease of* , *by reference to which the property contracted to be sold is afterwards conveyed, is described as a piece of building ground* [*&c.*]. *Evidence must be produced identifying this with the ground on which the house described in the particulars of sale has been built.*

4. *Evidence must be supplied to show that the property described in the abstract is identical with or includes that contracted to be sold as described in the particulars of sale. For this purpose tracings from the tithe commutation map of the parish, or similar evidence, supported by a statutory declaration of some person acquainted with the property, must be produced.*

5. *Accoring to the abstracted documents, the property the title to which is adduced is No.* 9, *Victoria Terrace, with a small piece of ground which was comprised in the lease of No.* 8, *Victoria Terrace, but the property as referred to in the particulars appears to be known as No.* 120, *Acre Lane. What evidence of identity does the vendor offer?*

6. *Is the Summer Lane, referred to in the indentures of lease and release of* 1832, *the same road as Jubilee*

(*h*) *Flower* v. *Hartopp*, 6 Beav. 476, 482.

Row mentioned in the will of 1888? *If so, a statutory declaration by some person well acquainted with the neighbourhood, to the effect that Jubilee Row was formerly known as Summer Lane, should be furnished to the purchaser.*

7. *How did No. 7a, X. Street, become No.* 19, *X. Street? A certified copy of the order of the London County Council altering this must be produced.*

8. *The description in the indenture of differs materially from that in the indenture of , and neither agrees with the particulars of sale. Notwithstanding condition evidence of identity must be given.*

PARTICULARS OF SALE.

The particulars should be fair and clear, and describe accurately the whole of the property offered for sale. Specific performance of a contract will not be enforced where the defendant has contracted under a mistake to which the plaintiff has even unintentionally contributed (*i*).

The general rule is that the printed or written particulars cannot be contradicted, explained or added to by oral evidence (*j*); but such evidence, though not admissible on behalf of a plaintiff for the purposes of obtaining specific performance with a variation, is admissible in equity on behalf of a defendant for purposes of defence (*k*), and a clear statement by the auctioneer at the time of sale verbally correcting a material misdescription in the particulars disentitles the purchaser to specific performance with compensation even if he did not hear the statement (*l*).

(*i*) *Baskcomb* v. *Beckwith*, L. R. 8 Eq. 100; 38 L. J. Ch. 536; 20 L. T. 862; 17 W. R. 812.

(*j*) *Higginson* v. *Clowes*, 15 Ves. jun. 516; 10 R. R. 112.

(*k*) *Woolam* v. *Hearne*, 7 Ves. jun. 211; 6 R. R. 113; 2 W. & T. 517, and notes thereunder.

(*l*) *Re Hare and O'Moore's Contract*, [1901] 1 Ch. 93; 70 L. J. Ch. 45; 83 L. T. 672; 49 W. R. 202.

Where the particulars of sale were misleading, but the conditions which were read in the auction room previous to the sale, but which were not printed or circulated among those present, were accurate on the point, and the plaintiff, the purchaser, stated that he was deaf, and did not understand that he was buying an equity of redemption, it was held, on a bill filed by him to have the contract for sale rescinded, that the description of the property being misleading the onus was on the vendor to show that the purchaser was not actually misled; that as he had failed to show this, the plaintiff was entitled to have the contract rescinded and his deposit returned (*m*).

Where there are defects in the subject of a contract which is silent as to compensation the Court will decree against the vendor specific performance with compensation, but this does not apply where the defect is the existence of restrictive covenants as compensation therefor is incapable of assessment (*n*).

The existence of an underground culvert or a sewer vested in the local authority if undisclosed is a good objection to the title as the vendor cannot in such a case convey all he has contracted to sell (*o*).

The existence of all easements should be referred to in the particulars. In the absence of such reference, a purchaser without notice thereof will not be compelled to accept the title (*p*).

An untrue statement of a material fact or a false impression purposely conveyed in the particulars will entitle a purchaser to rescind (*q*). Where, therefore, the particulars of a freehold property described the garden as fenced by a rustic wall with tradesmen's side entrance, whereas the wall did not in fact form part of the property, and the

(*m*) *Torrance* v. *Bolton*, L. R. 8 Ch. 118; 42 L. J. Ch. 177; 27 L. T. 738; 21 W. R. 134.

(*n*) *Rudd* v. *Lascelles*, [1900] 1 Ch. 815; 69 L. J. Ch. 396; 82 L. T. 256; 48 W. R. 586.

(*o*) *Re Puckett and Smith's Contract*, [1902] 2 Ch. 258; 71 L. J. Ch. 666; 87 L. T. 189; 50 W. R. 532.

(*p*) *Shackleton* v. *Sutcliffe*, 12 Jur. 199; 1 De G. & S. 609.

(*q*) *Hill* v. *Lane*, L. R. 11 Eq. 215; 40 L. J. Ch. 41; 23 L. T. 547; 19 W. R. 194.

tradesmen's side entrance was used on sufferance, this being known to the vendor, but not disclosed to the purchaser, it was held that the purchaser was entitled to have the contract rescinded, notwithstanding a condition providing that mistakes or errors in the description or particulars should not annul the sale, but that compensation should be given (*r*).

Where, however, property described as freehold stabling with dwelling rooms over was sold subject to a condition that if any error or misstatement should appear to have been made in the particulars or conditions it should not annul the sale but compensation should be made, and a year after completion it was discovered that some of the dwelling rooms over and a cellar under part of the property belonged to a third person, to whom the purchaser had to pay 300*l*., it was held in an action by him that he was not entitled to compensation under the condition which was only intended to apply to error in the subject-matter of the sale and not to defect in title, and that (even assuming a common mistake and that there need not be a total failure of consideration to justify rescission after conveyance) the error in this case was insufficient to justify rescission (*s*).

On a sale by auction of real estate the particulars must state whether it will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved; if it is stated that it will be sold without reserve, or to that effect, then it is not lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person (*t*).

If the particulars or conditions state that the sale is subject to a reserve bidding without expressly stipulating for the right for a person to bid up to the reserved price, and if a person is so employed the purchaser will not be bound (*u*), nor will he where the right to the vendor to bid

(*r*) *Brewer* v. *Brown*, 28 Ch. D. 309; 54 L. J. Ch. 605.
(*s*) *Debenham* v. *Sawbridge*, [1901] 2 Ch. 98; 70 L. J. Ch. 525; 84 L. T. 519; 49 W. R. 502.
(*t*) 30 & 31 Vict. c. 48, s. 5.
(*u*) *Gilliat* v. *Gilliat*, L. R. 9 Eq. 60; 33 L. J. Ch. 142; 21 L. T. (N. S.) 522; 18 W. R. 203.

once is reserved and he or his agent bids more than once (*x*).

The service on the vendor of a notice to pave under the Public Health Act, 1875, should be disclosed in the particulars, although its omission without fraudulent intent is not a subject for compensation under the usual condition (*y*).

See RESCISSION.

Requisitions.

1. *The particulars described the property as being* [state inaccuracy]. *This, it appears, is incorrect. The purchaser, therefore, declines to proceed, and requires the return of his deposit.*

2. *The purchaser has discovered that the property contracted to be sold is subject to a right of way and other easements in favour of the owner of the adjoining premises not described in the particulars of sale. Unless the vendor can procure the concurrence of the owner of the dominant tenement, the contract must be rescinded and the deposit returned.*

3. *The particulars describe the customary rent as* £ , *while according to the abstracted deeds it is* £ . *What allowance does the vendor propose to make off the purchase-money as compensation for this misdescription? It should not be less than* 25 *years' purchase, i.e.,* £ .

4. *The dimensions given in the indenture of* 19 , *are not identical to those stated in the particulars. Which are correct? If the particulars are incorrect, compensation must be allowed to the purchaser.*

(*x*) *Parfitt* v. *Jepson*, 46 L. J. C. P. 529; 36 L. T. 251.
(*y*) *Re Leyland and Taylor's Contract*, [1900] 2 Ch. 625; 69 L. J. Ch. 764; 83 L. T. 380; 49 W. R. 17.

PARTITION.

Partition is a mode of putting an end to joint ownership, and may be resorted to either by coparceners, joint tenants, or tenants in common. It may be effected either voluntarily, or by the Court, or the Ministry of Agriculture under the Inclosure Acts.

A voluntary partition of freehold or leasehold land effected on or after the 1st January, 1845, is void at law unless made by deed (*z*). The conditions formerly implied on a partition are not implied in any partition made by deed on or after the 1st October, 1845 (*a*). After the 31st December, 1882, a tenant for life, within the meaning of the Settled Land Acts, of an undivided share in land may concur in making partition (*b*).

The Chancery Division of the High Court has power, at the instance of one or more joint owners, whatever be the extent of the applicant's estate, to order a partition without the consent of the remaining joint owners (*c*); but the jurisdiction of the Court is ousted if there be an overriding active trust for management (*d*), or a trust for sale, even if all the reversioners have attained a vested interest (*e*), though a mere power of sale does not affect it (*f*). The Court has power on ordering a partition to make vesting orders relating to the rights of persons parties to the action and persons claiming under them, whether born or unborn (*g*).

After the 24th June, 1868, the Court, in cases where it might previously have ordered a partition, may, on the request of any person interested, if it appear to the Court

(*z*) 7 & 8 Vict. c. 76, s. 3; 8 & 9 Vict. c. 106, s. 3.
(*a*) 8 & 9 Vict. c. 106, s. 4.
(*b*) 45 & 46 Vict. c. 38, s. 3 (iv.).
(*c*) *Agar* v. *Fairfax*, 17 Ves. jun. 533.
(*d*) *Taylor* v. *Grange*, 15 Ch. D. 165.
(*e*) *Biggs* v. *Peacock*, 20 Ch. D. 200; 22 Ch. D. 284; 51 L. J. Ch. 555; 52 L. J. Ch. 1; 46 L. T. 432; 47 L. T. 341; 30 W. R. 605; 31 W. R. 148.
(*f*) *Boyd* v. *Allen*, 24 Ch. D. 622; 53 L. J. Ch. 701; 48 L. T. 628; 31 W. R. 544.
(*g*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 30; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 31.

that a sale would be more beneficial than a partition, order a sale in lieu of partition, and this may be done notwithstanding the dissent or disability of any of the parties interested (*h*); and the Court must order a sale, if so requested by persons interested, to the extent of a moiety or upwards in the property to which the action relates (*i*). And in such cases the Court has also power to make vesting orders relating to the rights of persons parties to the action and persons claiming under them (*k*).

See INCLOSURES, EXCHANGES AND PARTITIONS UNDER THE INCLOSURE ACTS.

Requisition.

The vendor and C. D., deceased, appear to have held the property contracted to be sold as tenants in common, and not as joint tenants. The agreement of , 19 , for partition not being under seal, either an order for partition must be abstracted and produced, or the legal personal representative of C. D. must join in the conveyance.

PARTNERSHIP.

All property which either originally formed part of or has been added to the common stock of a partnership, is deemed in equity to be personal estate and to be held by the partners as tenants in common; consequently where real property is purchased out of partnership assets, and limited to the grantees as joint tenants (*l*), on the death of one partner the legal estate devolves upon the surviving partners or partner, but in trust so far as necessary for the persons beneficially interested (*m*); a surviving partner can,

(*h*) Partition Act, 1868 (31 & 32 Vict. c. 40), s. 3.
(*i*) *Ibid.* s. 4.
(*k*) 13 & 14 Vict. c. 60, s. 30; 31 & 32 Vict. c. 40, s. 7; 56 & 57 Vict. c. 53, s. 31.
(*l*) *Morris* v. *Barrett*, 3 Y. & J. 384.
(*m*) Partnership Act, 1890 (53 & 54 Vict. c. 39, s. 20 (2).

therefore, it would seem, in the absence of any stipulation in the articles of partnership to the contrary, make a good title to a purchaser and can give a receipt (*n*); but it is usual, if practicable, to obtain the concurrence of the legal personal representative of the deceased partner.

Requisitions.

1. *The partnership deed of B. & Co. must be abstracted in chief and produced. How is it proposed to deal with the purchase-money?*

2. *The estates conveyed to A., B., and C. in fee as joint tenants appear to have been treated by them as belonging to the firm of A. and Sons: Under these circumstances the purchaser cannot safely accept a conveyance from C. as survivor, and it must be shown who were the members of the firm of A. and Sons at the date of the original conveyance, and which of these members have since retired or died, and who are the present members of the firm.*

PARTY WALLS.

See BOUNDARIES.

PAYMENT INTO COURT.

The payment of purchase or other money into Court is proved by the production of an office copy of the Paymaster-General's certificate.

Requisition.

Payment into Court of the purchase-money in accordance with the conditions of sale must be proved in the usual manner by the production of an office copy of the Paymaster-General's receipt.

(*n*) *Trustee Act*, 1893 (56 & 57 Vict. c. 53), s. 20.

PEDIGREE.

In order to prove a pedigree, certificates of birth or baptism, marriage, and death or burial should be required.

Pedigrees are generally readily proved where the possession has gone according to them; the difficulty arises where a person claims as heir under a long pedigree which has no other connection with the title. Such a title should be accepted with caution, for it is often as difficult to point out a defect in it where there is no contest as it is to defend it where there is (*o*).

See BIRTHS, MARRIAGES AND DEATHS.

Requisition.

What children did the testator A. B. leave? A pedigree should be supplied and verified in the usual way.

PERPETUITIES.

All executory interests in real or leasehold estates, and all equitable contingent remainders, are void, unless they are so limited that they must vest within lives in being at the time of the gift, or 21 years from the decease of the survivor of such lives. Any number of lives may be included, and a child *en ventre sa mère* is a life in being within the meaning of the rule, and instead of the period of 21 years the minority of any person who must be *in esse* at the death of the survivor of the lives may be substituted.

It should be observed that it is not enough that the estates may, and, in fact, do, vest within the period allowed, but they must necessarily so vest within such period.

The rule has no application to estates limited after or in defeasance of an estate tail, such estates being liable to be barred by the tenant in tail.

(*o*) Sug. 418.

Estates taking effect under a special power of appointment are treated as if the limitations inserted in the instrument exercising the power had actually been inserted in the original instrument, and are void or valid accordingly (*p*).

Legal contingent remainders are subject to the separate and independent rule that an estate cannot be limited to an unborn person for life followed by an estate to any child of such unborn person (*q*). Contingent remainders of legal estates are said not to be subject to the ordinary rule against perpetuities, though a contingent remainder limited after a contingent remainder is void, if it infringes the rule (*r*).

In connection both with the ordinary rule against perpetuities and the special rule relating to contingent remainders, it must be remembered that the future wife or husband of a living person, no matter what the age of the living person, may possibly be an unborn person, and that for the purpose of the rule against perpetuities any event that is not theoretically impossible is treated as being possible.

Limitations depending or expectant upon a prior limitation which is void for remoteness are themselves invalid, but limitations in default of appointment under a power which is void for remoteness are not invalid unless they are themselves obnoxious to the rule against perpetuities (*s*).

Closely allied to the subject of perpetuities is the statutory restriction imposed by the Thellusson Act against the accumulation of income for the whole period, which, under the rule against perpetuities, was possible (*t*). This Act provides that no person shall settle any real or personal property so that the whole or any part shall be accumulated for any longer term than the life of the settlor, *or* the term

(*p*) *Routledge* v. *Dorril*, 2 Ves. jun. 357; 2 R. R. 250.

(*q*) *Whitby* v. *Mitchell*, 44 Ch. D. 85; 59 L. J. Ch. 485; 62 L. T. 771; 38 W. R. 337.

(*r*) *Re Frost*, *Frost* v. *Frost*, 43 Ch. D. 246; 59 L. J. Ch. 118; 62 L. T. 25; 38 W. R. 264.

(*s*) *Re Abbott*, *Peacock* v. *Frigout*, [1893] 1 Ch. 54; 62 L. J. Ch. 46; 67 L. T. 794; 41 W. R. 154; 3 R. 72.

(*t*) *Thellusson* v. *Woodford*, 8 R. R. 104; 11 Ves. jun. 112; 1 Bos. & P. (N. R.) 357.

of 21 years from his death, *or* during the minority of any persons living or *en ventre sa mère* at the death of the settlor, *or* during the minorities of any persons who, if of full age, would be entitled to the income directed to be accumulated. Accumulations directed otherwise are void, and the income, so long as it is directed to be accumulated contrary to the provisions of the Act, goes to the person who would have been entitled if such accumulation had not been directed. The Act does not apply to a provision for payment of debts or raising portions for children of the settlor, or of any person taking an interest under the settlement, or to any direction touching the produce of timber or underwood (*u*). The accumulation of income for the purchase of land only has, since the 27th June, 1892, been further restricted to the minorities of any persons who under the settlement would, if of full age, be entitled to the income accumulated (*x*).

A direction to accumulate income which is void under the Thellusson Act is not altogether void, but is void only to the extent that the direction to accumulate is excessive (*y*).

Requisition.

The devise of Whiteacre contained in B.'s will to the vendor, as "the first son of A. who should attain 22 *years," would appear to be void as infringing the rule against perpetuities. Having regard to this, how does the vendor propose to make a title?*

PORTIONS.

In perusing an abstract, portions or family charges which create incumbrances on the land must be looked for. If any such are found to exist, their release should be obtained, or, if by reason of persons entitled to them being infants or

(*u*) The Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98).
(*x*) The Accumulations Act, 1892 (55 & 56 Vict. c. 58).
(*y*) *Griffiths* v. *Vere*, 9 Ves. jun. 127.

otherwise this cannot be done, advantage should be taken of the provision of the Conveyancing Act, 1881 (*z*), that where land subject to any incumbrance is sold by or out of Court, the Court may, on the application of any party to the sale, "direct or allow" payment into court, in case of an annual sum charged on the land or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, will be sufficient, by the dividends, to provide for such charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon, together in either case with such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, and thereupon the Court may, with or without notice to the incumbrancer, declare the land freed from the incumbrance, and make any order for conveyance or vesting order proper for giving effect to the sale (*a*).

It will be observed that the provisions referred to above apply not only to sales by the Court, but to ordinary sales. The practice is to make applications, under the Act, in Chambers (*b*); and the order gives the vendor liberty to lodge the necessary amount in court, and declares that upon such lodgment the land in question will be freed from the charge (*c*).

See SETTLED LAND.

Requisitions.

1. *By the will of A. B., deceased, the land contracted to be sold is charged with portions for his younger children. What children did he leave? Each of them must concur in the conveyance, or an order must, at the vendor's expense, be obtained under the Conveyancing Act, 1881, s. 5, freeing the property.*

(*z*) 44 & 45 Vict. c. 41, s. 5.
(*a*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 5.
(*b*) *Patching* v. *Bull*, 46 L. T. 227; 30 W. R. 244.
(*c*) 44 & 45 Vict. c. 41, s. 5.

2. *Has the power contained in the settlement of* 19 , *to create terms for raising portions been exercised? If so, please give particulars and state what portions have been raised thereunder.*

POSSESSORY TITLES.

It occasionally happens that an anxious purchaser is willing or even contracts to take a possessory title. A possessory title is rather a vague term inasmuch as all titles are possessory. The proper meaning to be attached to the word appears to be a title evidenced only by acts of ownership and not by any conveyance, mortgage settlement or specific devise of the land in question. The purchaser's solicitors should, under such circumstances, explain to him the objections to such a title, namely, that the 12 years' limit under the Real Property Limitation Act, 1833 (*d*), and the Real Property Limitation Act, 1874 (*e*), only applies as against a person entitled in possession and also *sui juris* when the time began to run (*f*); also, that if an estate is in settlement, time does not begin to run against a remainderman until his estate falls into possession, so that a title may be defective even after 30 years' possession (*g*). Also that the purchaser runs the risk of the land being subject to restrictive covenants of which if he had obtained a title of 40 years he would have had notice and of which he would therefore be held to have constructive notice (*h*). If, after this being explained to the purchaser, he still desires or is bound by contract to accept the title, a statutory declaration (*i*) should be obtained proving that the

(*d*) 3 & 4 Will. 4, c. 27.
(*e*) 37 & 38 Vict. c. 57.
(*f*) *Re Alison, Johnson* v. *Mounsey*, 11 Ch. D. 284; 40 L. T. 234; 27 W. R. 537.
(*g*) See Sug. 483; *Mills* v. *Capel*, L. R. 20 Eq. 692; 44 L. J. Ch. 674; 33 L. T. 158; *Pedder* v. *Hunt*, 18 Q. B. D. 565; 56 L. J. Q. B. 212; 56 L. T. 687; 35 W. R. 371.
(*h*) *Re Nisbet and Pott's Contract*, [1905] 1 Ch. 391; [1906] 1 Ch. 386; 75 L. J. Ch. 238; 94 L. T. 297; 54 W. R. 286; 22 T. L. R. 233.
(*i*) Appendix C.

land contracted to be sold has been held by the vendor and his predecessors in title without interruption under the title offered for a number of years, as many as possible above 12, and that no interest has, for at least that period, been paid, or acknowledgment in writing given in respect of any incumbrance, and that no acknowledgment has been given of the title of any other person, and that the deponent has no knowledge of any restrictions affecting the land. It would be well also for the purchaser to stipulate that by way of indemnity he should have from the vendor unconditional covenants for title. It is the better plan for these to be comprised in a separate deed.

See LIMITATION, STATUTES OF—TITLE, WANT OF.

Requisition.

A statutory declaration, showing that the vendor has for upwards of years been in the full, free, and undisturbed possession of the property contracted to be sold, must be supplied at the vendor's expense.

POWERS OF APPOINTMENT.

See APPOINTMENTS.

POWERS OF ATTORNEY.

See AGENTS.

POWERS OF SALE.

See MORTGAGES—TRUSTEES, SALES AND MORTGAGES BY.

PRESCRIPTION.

See EASEMENTS.

PRODUCTION, COVENANTS FOR.

See TITLE DEEDS.

PROTECTION ORDER.

See JUDICIAL SEPARATION AND PROTECTION ORDERS.

PROTECTOR.

See ENTAIL.

PUBLIC-HOUSE.

Upon the sale of a public-house as a going concern, time is of the essence of the contract, and the vendor is bound to have a valid and effectual licence existing at the date fixed for completion which he can indorse in the usual way, and upon or in respect of which the purchaser can apply at once for interim protection under the Licensing (Consolidation) Act, 1910 (*j*), at the next special sessions (*k*).

A covenant by the assignor of the lease of a public-house for himself, his executors, administrators, and assigns to purchase from the assignee all beer consumed, though such covenant is not contained in the lease, is binding in equity upon an assignee with notice (*l*).

(*j*) 10 Edw. 7 & 1 Geo. 5, c. 24, s. 88.
(*k*) *Tadcaster Tower Brewery Co.* v. *Wilson*, [1897] 1 Ch. 705; 66 L. J. Ch. 402; 76 L. T. 459; 45 W. R. 428; 61 J. P. 360.
(*l*) *Luker* v. *Dennis*, 7 Ch. D. 227; 47 L. J. Ch. 174; 37 L. T. 827; 26 W. R. 167.

Where there was a covenant in a lease by a lessee of a public-house that he would not during the term of the lease directly or indirectly buy, sell, or dispose of upon the premises any ales or stout other than such as should have been *bonâ fide* purchased of the lessors, or from them or either of them, either alone or jointly with any other person or persons who might thereafter become a partner or partners with them or either of them, provided they or he should at such time deal in or vend such liquors as aforesaid, and be willing to supply the same to the lessee of good quality and at the fair current market price, it was held, first, upon the construction of the covenant, that the benefit of it was not restricted either to assigns carrying on the same brewer's business as the lessors, or to assigns who themselves made beer; secondly, that the covenant was not a personal covenant incapable of assignment, but a covenant relating to the way in which the business at a particular house was to be carried on, and accordingly a covenant running with the land and enforceable by the owner of the reversion on the lease (*m*).

A provision in a mortgage from an hotel keeper to a brewer that during the continuance of the security the mortgagor shall deal exclusively with the mortgagee for all beer sold on the mortgaged premises, and that the loan shall continue for five years certain is valid (*n*); but notwithstanding a covenant in a mortgage of a leasehold public-house that the mortgagor and persons deriving title under him shall not sell on the premises liquor not purchased from the mortgagee, the mortgagor is entitled to pay off the mortgage when the tie becomes inoperative (*o*).

Where the lessee of a public-house covenanted with his lessor that he, his executors, administrators, or assigns, would not wilfully do or suffer any act or thing which might be a breach of the rules and regulations established by law

(*m*) *Clegg* v. *Hands*, 44 Ch. D. 503; 59 L. J. Ch. 477; 62 L. T. 502; 38 W. R. 433.

(*n*) *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307; 67 L. J. Ch. 540; 79 L. T. 201; 47 W. R. 84.

(*o*) *Rice* v. *Noakes*, [1900] 1 Ch. 213; [1900] 2 Ch. 445; 69 L. J. Ch. 635; 82 L. T. 784; 48 W. R. 629.

for the conducting of licensed public-houses, or be a reasonable ground for the withdrawal or withholding of all or any of the licences for the sale of beer or ale, wines, and spirituous liquors therein, and the lessee assigned the term to the defendants, who underlet the premises, it was held that the term "assign" in the covenant did not include an underlessee, and that the defendants were not liable for a breach of the covenant in respect of offences committed by their underlessee (*p*).

Although the good-will of a public-house is not a personal goodwill but incident to the house, so that the owner has sufficient interest in the business to entitle him to an appointment of a receiver to secure the preservation of the licence pending litigation (*q*), yet to enable such good-will to pass by a mortgage of the house it must appear either in express terms or by implication that such good-will is comprised in the security (*r*).

Requisitions.

1. *It is assumed that the vendors will on the day fixed for completion hand over the licence of the hotel duly indorsed to enable the purchaser to apply for interim protection under the Licensing (Consolidation) Act*, 1910.

2. *It is understood that the Lion Hotel is a free house, and that the vendor is under no restriction in connection with it.*

PURCHASER.

See VENDOR AND PURCHASER, BANKRUPTCY OR DEATH OF, BEFORE COMPLETION.

(*p*) *Bryant* v. *Hancock*, [1898] 1 Q. B. 716; 67 L. J. Q. B. 507; 78 L. T. 397; 46 W. R. 386; 62 J. P. 324.

(*q*) *Leney & Sons, Ltd.* v. *Callingham and Thompson*, [1908] 1 K. B. 79; 77 L. J. K. B. 64; 97 L. T. 697.

(*r*) *Whitley* v. *Challis*, [1892] 1 Ch. 64; 61 L. J. Ch. 307; 65 L. T. 838; 40 W. R. 291; *Re Bennett, Clarke* v. *White*, [1899] 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406.

QUASI-ENTAIL.

See LIFE ESTATE.

QUIT RENTS.

Quit rents, chief rents, or free rents, are rents payable by freehold tenants to their feudal lord. They are always of trifling amount, and when they are payable to a mesne lord can only have arisen prior to the Statute of Quia Emptores (*s*). Where they are payable, other incidents of tenure, such as reliefs or even heriots, should be inquired after.

Rents payable by copyholders to the lord of the manor are also known as quit rents.

Quit rents should be carefully distinguished from rentcharges reserved as the whole or part of the consideration for a sale; such rentcharges are principally found in cases of freeholds in Manchester and are commonly called fee farm rents; besides differing in their origin and nature from quit rents, there is this practical difference, that while quit rents can, fee farm rents, like rents reserved on a lease and rents made payable under a grant or licence for building purposes, cannot be compulsorily redeemed under the Conveyancing Act, 1881 (*t*).

The existence of quit rents should in all cases be mentioned in the particulars of sale. In the case of copyholds, however, their non-disclosure is not a ground for compensation, as they are usually incidental to land of copyhold tenure; and on the same ground probably no compensation would be given in the case of freeholds stated in the particulars to be held of a mesne lord or described as forming part of a manor, if such freeholds were found to be subject to them, and a condition that freeholds were sold subject to all incidents of tenure would probably cover

(*s*) 18 Edw. 1, stat. 1, c. 1. (*t*) 44 & 45 Vict. c. 41, s. 45.

quit rents and even heriots. Heriots in the case of freehold property are so extremely rare that the matter in question is of little practical importance.

Requisitions.

1. *The property contracted to be sold appears to form part of a manor. Is there any quit rent payable in respect of it? and if there is, what is the amount and to whom is it payable?*

2. *The freeholds sold appear to be subject to a quit rent payable to the lord of the manor of X.; as this was not referred to in the particulars, it must either at the vendor's expense be redeemed under the Conveyancing Act*, 1881, *s.* 45, *or compensation must be allowed in respect of it.*

RATES AND TAXES.

Rates and taxes are, in general, apportionable, but it is usual in contracts and conditions of sale to provide expressly for apportionment. The rates and taxes due prior to completion do not, as a rule, affect the purchaser, as, with the exception of the water rate in certain cases mentioned below, they do not constitute a charge upon the property. The subject is, nevertheless, of some importance in connection with the tenancies of property sold which is let on lease or otherwise, and it may not, therefore, be out of place to give a short statement relating to a few of the rates and taxes most commonly payable.

Poor Rate.—This rate, originated by the Poor Relief Act, 1601 (*u*), is a personal liability of the occupier of lands. Provision is made by the Poor Rate Assessment and Collection Act, 1869, for apportioning the rate between successive occupiers (*x*). The owner may be rated in cases where the rateable value does not exceed 8*l.*, or in the

(*u*) 43 Eliz. c. 2.

(*x*) 32 & 33 Vict. c. 41, s. 16.

metropolis 20*l.*, and in certain other boroughs intermediate sums (*y*). Unoccupied houses are not liable.

General District Rate.—This rate is levied under the provisions of the Public Health Act, 1875 (*z*). It is, in general, payable by the occupier, though the owner may be rated in certain cases (*a*). The Act contains provisions for apportioning the rate between successive occupiers (*b*). Unoccupied houses are not liable.

Highway Rate.—This rate is levied under the Highway Act, 1835 (*c*), as amended by the Highway Act, 1862 (*d*), the Highway Act, 1864 (*e*), and the Highway Rate Assessment and Expenditure Act, 1882 (*f*). The occupier is, in general, liable to pay it. The rate is collected in the same way as the poor rate, and the owner may be rated in the case of small tenements (*g*).

A highway rate may also in certain cases be levied under the Public Health Act, 1875 (*h*).

Private Improvement Rate.—This rate is levied under the provisions of the Public Health Act, 1875 (*i*). It is payable by the occupier, who is permitted, apart from special contract, to deduct three-fourths of the amount from his rent, if it be a rack-rent, and, if less than rack-rent, he may deduct such proportion of three-fourths of the rate as his rent bears to a rack-rent (*k*).

Water Rate.—This rate is in general payable by the occupier, but the Waterworks Clauses Act, 1847 (*l*), makes the owners of all dwelling-houses, the annual value of which does not exceed 10*l.*, liable to the payment instead

(*y*) 32 & 33 Vict. c. 41, ss. 3, 4.
(*z*) 38 & 39 Vict. c. 55, ss. 209—212.
(*a*) *Ibid.* s. 211 (1).
(*b*) *Ibid.* s. 211 (3).
(*c*) 5 & 6 Will. 4, c. 50.
(*d*) 25 & 26 Vict. c. 61.
(*e*) 27 & 28 Vict. c. 101.
(*f*) 45 & 46 Vict. c. 27.
(*g*) *Ibid.* s. 3.
(*h*) 38 & 39 Vict. c. 55, ss. 216 and 217.
(*i*) *Ibid*, ss. 213—215.
(*k*) *Ibid.* s. 214.
(*l*) 10 & 11 Vict. c. 17, s. 72.

of the occupier. The private Act incorporating a water company may also make the owner liable instead of the occupier where the rent amounts to a greater sum than 10*l*., *e.g.*, the East London Waterworks Act, 1853 (*m*), makes the owner and not the occupier liable where the rent does not exceed 20*l*. In all cases where the owner and not the occupier is liable by law or agreement with the company to the payment of the water rate in respect of any dwelling-house, such water rate and interest is a charge on the dwelling-house in priority to all other charges affecting the premises, and the amount may be recovered with costs from the owner or the occupier for the time being; but no proceedings can be taken against the occupier until after notice, and no greater sum than the rent due can be recovered from the occupier, who is permitted to deduct the amount paid from his rent (*n*). The effect of this is, that not only is the amount due for arrears a charge upon the premises, but a purchaser of the freehold is liable to a personal action at the suit of the waterworks company to recover such arrears (*o*).

The King's Taxes consist of land tax and income tax, Schedule A.; income tax, Schedule B. (*p*), and inhabited house duty (*q*) : the only one of these taxes calling for special mention is the income tax, Schedule A.; this tax is paid by the tenant, who may deduct it from his rent, even although his lease may contain an express covenant by him to pay it; and tenants who are called upon to pay arrears due from former occupiers may also deduct the sums so paid (*r*).

(*m*) 16 & 17 Vict. c. clxvi. s. 81.

(*n*) The Water Companies Regulation of Powers Act, 1887 (50 & 51 Vict. c. 21), s. 4.

(*o*) *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72; 67 L. T. 319; 56 J. P. 773.

(*p*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), as amended by Income Tax Act, 1853 (16 & 17 Vict. c. 34); Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40).

(*q*) House Tax Act, 1851 (14 & 15 Vict. c. 36).

(*r*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 60 and 103; Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 35; and the Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), s. 15; Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Schedule A, No. VIII.

Apart from a covenant to pay rates and taxes, the tenant may deduct from his rent—

(1) Three-fourths of private improvement rate.
(2) Sewers rate.
(3) Land Tax.
(4) Income Tax, Schedule A.

The occupier of any land in an urban or rural district used as arable, meadow, or pasture ground only, or as woodlands, market gardens, nursery grounds, orchards or allotments, and the occupier of land covered with water or used only as canal or railway, are liable only to be assessed for the levying of general district rates in urban districts and for the levying of so much of the poor rate as is required to pay special expenses in rural districts, in the proportion of one-fourth part of the net annual value of such property (*s*). Where the occupier of agricultural land would otherwise be liable as compared with the occupier of other hereditaments to be assessed in a proportion greater than one half, until the 1st April, 1923, he is liable, to pay only half the rate in the £ which is payable in respect of buildings and other hereditaments (*t*); when any hereditaments consist partly of agricultural land and partly of buildings, the gross estimated rental of the buildings, when valued separately from the agricultural land, is, while the buildings are used only for the cultivation of the land, calculated not on structural costs, but on the rent at which they would be expected to let to a tenant from year to year, if they could only be so used; and the total gross estimated rental of the hereditaments is not increased by the separate valuation (*u*). Glasshouses in or on a market garden, if buildings, are rated as buildings and not as agricultural land under this provision (*x*).

A covenant to pay all rates, taxes, and assessments

(*s*) 38 & 39 Vict. c. 55, ss. 211, 230; 53 & 54 Vict. c. 17; 54 & 55 Vict. c. 33.
(*t*) 59 & 60 Vict. c. 16, s. 1; 1 Edw. 7, c. 13, s. 1; 11 & 12 Geo. 5, c. 53.
(*u*) 59 & 60 Vict. c. 16, s. 5 (c).
(*x*) *Smith* v. *Richmond*, [1898] 1 Q. B. 683; 67 L. J. Q. B. 439; 78 L. T. 174; 46 W. R. 401; 62 J. P. 676.

includes land tax and sewers rate (*y*); and such a covenant which is expressed to extend to "all other outgoings of every description for the time being payable either by landlord or tenant" includes the lessor's proportion of the cost of paving a street under the Metropolis Local Management Acts (*z*).

A lessee who has covenanted to pay all taxes, rates, duties and assessments whatsoever payable during the term in respect of the premises demised is liable to pay the costs of drainage works required by the local authority under section 8 of the Metropolitan Management Act, 1855 (*a*).

Where a lessee has covenanted to pay assessments and impositions, he must do so in respect of such an imposition as the expense of paving a new street, notice of apportionment and charge of which has been given under the Metropolitan Management Act, even though the work may not actually be done before termination by notice of the lease (*b*); but a covenant by a tenant to pay "all rates, taxes, and assessments whatsoever, which now are or during the term shall be imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax," does not include expenses of paving, &c. recovered in a summary manner under the Public Health Act, 1875 (*c*). The Court of Appeal, however, held that a covenant in very similar terms but containing the word "impositions" after assessments included the expense of abating a nuisance under a notice under the Public Health (London) Act, 1891 (*d*). Where the agreement is for the

(*y*) *Amfield* v. *White*, 27 R. R. 745; Ry. & M. 246; *Manning* v. *Lunn*, 2 C. & K. 13.

(*z*) *Aldridge* v. *Ferne*, 17 Q. B. D. 212; 55 L. J. Q. B. 587; 34 W. R. 578.

(*a*) *Farlow* v. *Stevenson*, [1900] 1 Ch. 128; 69 L. J. Ch. 106; 81 L. T. 589; 48 W. R. 213.

(*b*) *Wix* v. *Rutson*, [1899] 1 Q. B. 474; 68 L. J. Q. B. 298; 80 L. T. 168.

(*c*) 38 & 39 Vict. c. 55, s. 150; *Baylis* v. *Jiggens*, [1898] 2 Q. B. 315; 67 L. J. Q. B. 793; 79 L. T. 78.

(*d*) *Foulger* v. *Arding*, [1901] 2 K. B. 151; [1902] 1 K. B. 700; 71 L. J. K. B. 499; 86 L. T. 488; 50 W. R. 417.

tenant to pay all taxes, parochial and parliamentary, he is not bound to pay the sewers rate (*e*).

In the case of a lease at a ground rent, even if the lessors covenant to pay the land tax, they are only chargeable with such part of the land tax as is proportionate to the ground rent (*f*).

See LAND TAX—STREET IMPROVEMENTS.

Requisitions.

1. *The last receipt for all rates and taxes payable in respect of the property sold must be produced. An apportionment must be made of the accruing rates and taxes, and the vendor must pay the amount attributable to the period before the date fixed for completion.*

2. *The purchaser will require the last receipt for water rate to be produced on completion.*

3. *Is there any private improvement rate payable in respect of the property sold?*

REAL REPRESENTATIVES.

Legal personal representatives are now, in consequence of the statutory provisions stated hereunder, often referred to as real representatives.

On the death of any person after the 31st December, 1897, all real estate, which is vested in any person without a right in any other person to take by survivorship, devolves to and becomes vested in his personal representatives from time to time as if it were a chattel real (*g*); but one only of several joint personal representatives cannot without the authority of the Court sell or transfer real estate (*h*). Executors who have proved the will of such a testator could not before the 1st January, 1912, convey

(*e*) *Palmer* v. *Earith*, 14 L. J. Ex. 256; 14 M. & W. 428.
(*f*) *Mansfield* v. *Relf*, [1908] 1 K. B. 71; 77 L. J. K. B. 145; 97 L. T. 745.
(*g*) 60 & 61 Vict. c. 65, s. 1 (1), (4).
(*h*) *Ibid.* s. 1 (2).

the legal estate without the concurrence of a co-executor who has neither proved nor disclaimed (*i*), but since the 1st January, 1912, the concurrence of executors who have not proved a will need not be obtained (*k*).

The expression "real estate" in the section enacting this excludes land of both copyhold and customary freehold tenure in any case in which an admission or any act by the lord is necessary to perfect the title of a purchaser (*l*); an equitable estate or interest in copyholds, however, devolves on the death of the owner on his personal representative (*m*). The expression "real estate" apparently includes rent charges, tithes in lay hands, advowsons, right of common tolls and other franchises.

It is conceived that the section means that the real estate is to vest in the legal personal representatives, for the same estate as the deceased held. Thus, if the deceased was merely a tenant for his own life, his legal personal representatives after his death would take nothing, as the estate which was vested in him has come to an end; but there seems to be no reason for excluding from the operation of the section estates *pur autre vie*, and possibly also estates tail. No doubt the Act applies to contingent remainders and executory interests, and equitable estates, and also to copyhold and customary estates where the deceased was not a tenant on the rolls.

The personal representatives of a deceased testator may at any time after his death assent to any devise contained in his will, or may convey the land to any person entitled as heir, devisee or otherwise, and may make the assent, or convey either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge (*n*).

Assent may be express or implied, but as a purchaser for some time after a devolution on death will be entitled to

(*i*) *Re Pawley and London and Provincial Bank*, [1900] 1 Ch. 58; 69 L. J. Ch. 6; 81 L. T. 507: 48 W. R. 107.
(*k*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 12.
(*l*) 60 & 61 Vict. c. 65, s. 1 (1), (4).
(*m*) *Re Somerville and Turner's Contract*, [1903] 2 Ch. 583; 72 L. J. Ch. 727; 89 L. T. 405; 52 W. R. 101.
(*n*) 60 & 61 Vict. c. 65, s. 3 (1).

evidence, it is advisable that the assent should be in writing, but a devisee is not entitled to insist upon a conveyance instead of an assent (*o*).

At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed at the request of the person entitled to the land to convey the land to that person, the Court may, if it thinks fit, on the application of that person and after notice to the personal representatives, order a conveyance to be made, or in the case of registered land the person entitled, to be registered either solely or jointly with the personal representatives (*p*).

Real estate held by more than one person as joint tenants (as in the case of a trust) does not devolve upon the personal representative, there being a right of survivorship, and when real estate is held by a sole trustee, on his death it vests, under the Conveyancing Act, 1881, in his personal representative (*q*).

The Act does not confer a new right of retainer as against real assets (*r*); nor does it render a charge of debts nugatory for all purposes; thus it still has the effect of bringing such debts within the Real Property Limitation Act, 1874, s. 8 (*s*).

See EXECUTORS, SALES AND MORTGAGES BY.

Requisition.

The assent of the executors of A. B. to the devise to the vendor must be proved, or they must join in the conveyance.

RECEIPT.

See CONSIDERATION.

(*o*) *Re Pix Plondey* v. *Stileman*, [1901] W. N. 163.
(*p*) 60 & 61 Vict. c. 65, s. 3 (2).
(*q*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.
(*r*) *Re Williams, Holder* v. *Williams*, [1904] 1 Ch. 52; 73 L. J. Ch. 82; 89 L. T. 580; 52 W. R. 318; 20 T. L. R. 54.
(*s*) 37 & 38 Vict. c. 57; *Re Balls, Treuby* v. *Balls*, [1909] 1 Ch. 791; 78 L. J. Ch. 341; 100 L. T. 780.

RECITALS.

Recitals, which at one time almost invariably formed part of every deed, are no longer inserted as a matter of course. They are, however, of considerable use, and should be inserted in cases other than of a simple character for the purpose of showing the interests of the various parties and stating clearly the circumstances which have led up to the execution of the deed containing them. They also serve after 20 years to supply evidence of the facts recited (*t*).

Recitals are either narrative or introductory. The former tell the story of the previous dealings with the property in question, and should usually commence with a general recital, that is to say, one which does not show how or by whom the property was conveyed to the uses mentioned; but where the first recital is that of a mortgage where the equity of redemption of the mortgagor is subsequently dealt with, such recital, like those subsequent, should be particular, that is, should show by whom as well as to whom the property is conveyed.

Narrative recitals should only contain matters of conveyance, and not other facts. Thus there is no occasion to insert places of birth, marriage or death, or proof of a will of copyholds. Where a death took place prior to the 1st January, 1898, a recital of the proof of a will need not be inserted in a deed dealing only with freehold estates. Since that date such recital is material, and should not be omitted (*u*). It is, however, the usual practice to recite the probate in all cases. Introductory recitals are used to show the object of the deed in which they occur.

Recitals contained in a deed will usually be taken as statements on the faith of which some or all of the parties are intended to act, and parties to the deed will consequently be estopped from denying their truth. Thus, a recital that the vendor is seised in fee is such a statement, and the vendor will not be allowed to dispute its accuracy in

(*t*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 2.
(*u*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1 (1) (5).

any action brought upon the deed by the purchaser or any person claiming under him.

Consequently if property subject to a mortgage is reconveyed to the vendor after the execution of a conveyance containing a recital that the vendor is seised in fee simple, the purchaser will obtain the legal estate which was in fact outstanding at the time of the conveyance by estoppel.

Recitals of facts forming links in a chain of title must in general be proved, but the following do not require proof: (1) Those contained in a deed 20 years old at the date of the contract (*x*). (2) Those evidently framed for the purpose of keeping notice of trusts off a conveyance (*y*). (3) Of payment of the consideration in deeds executed after 31st December, 1881 (*z*). (4) Those relating to the title prior to the time stipulated for its commencement (*a*).

Recitals of deeds which apparently do not relate to the property sold, or which, in answer to requisitions, are stated not to so relate, will not fix the purchaser with constructive notice of matters contained in the recited deeds (*b*); but if a recital appears to relate to the property sold, a requisition should be made for the instrument recited to be abstracted in chief, unless it is prior to the root of title (*a*). A purchaser cannot avoid constructive notice by omitting to investigate the title, even though the law under an open contract precludes investigation (*c*).

Requisition.

The conveyance of , 19 , *contains a recital of an indenture, dated the* 19 , *which appears to relate to the property contracted to be sold. Will the vendors' solicitors state whether or not it does so relate? If it does, a supplemental abstract thereof in chief must be supplied.*

(*x*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 2.
(*y*) *Re Harman and Uxbridge & Rickmansworth Rail. Co.*, 24 Ch. D. 720; 52 L. J. Ch. 808; 49 L. T. 130; 31 W. R. 857.
(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 55.
(*a*) *Ibid.* s. 3 (3).
(*b*) *English and Scottish Mercantile Investment Trust* v. *Brunton*, [1892] 2 Q. B. 700, at p. 714; 67 L. T. 406; 41 W. R. 133.
(*c*) *Patman* v. *Harland*, 17 Ch. D. 353; 50 L. J. Ch. 642; 44 L. T. 728; 29 W. R. 707.

RECONVEYANCE.

As soon as the amount secured by a mortgage (that is to say, the principal and interest and mortgagee's costs, charges and expenses) has been discharged, the mortgagor is entitled to a reconveyance of the legal estate if vested in the mortgagee. If there is no legal estate vested in the mortgagee, the interest of the mortgagee determines as soon as the amount secured has been discharged, and no reconveyance is necessary.

In the case of copyholds mortgaged only by means of a covenant to surrender, a mere receipt for the mortgage money is all that is required to vacate the mortgage; and if they be mortgaged by means of a conditional surrender, and the mortgagee has not been admitted, an entry on the court rolls of a memorandum of satisfaction is sufficient to make void such conditional surrender. If, however, the mortgagee has been admitted, he must re-surrender to the use of the mortgagor, who must again be admitted as tenant on the rolls.

In the case of a mortgage by demise of a term, as soon as the mortgage money has been paid off the term becomes satisfied within the meaning of the Satisfied Terms Act, 1845 (*d*), and no reconveyance is necessary.

Where a mortgage has been made to a building or friendly society, a mere receipt for the mortgage money is sufficient to revest the estate in the person entitled to the equity of redemption (*e*), the legal estate going either to the mortgagor or to such person as has the best equity to call for it, irrespective of the maxim, *Qui prior est tempore potior est jure* (*f*). A reconveyance by a building society is exempt from stamp duty (*g*); the right to exemption is not lost by reason of the trustees, for the purposes of the

(*d*) 8 & 9 Vict. c. 112.
(*e*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 42; 6 & 7 Will. 4, c. 32, s. 5; Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 53 (1); 38 & 39 Vict. c. 60, s. 16 (7).
(*f*) *Pease* v. *Jackson*, L. R. 3 Ch. 576; 37 L. J. Ch. 725; 17 W. R. 1.
(*g*) 37 & 38 Vict. c. 42, s. 41; 6 & 7 Will. 4, c. 32, s. 37.

dissolution of a society, being joined as parties to the reconveyance (*h*).

Where the money due upon a mortgage has been paid to the mortgagee, but no reconveyance has been executed, the mortgagor becomes, from the date of such payment, a tenant at will to the mortgagee, and the legal estate of the mortgagee is extinguished by thirteen years' adverse possession of the mortgagor (*i*).

Any person who has any interest, however slight, in the mortgaged property is entitled to pay off the mortgage and call for a conveyance, and this right is not confined to persons claiming under the mortgagor, and even a person who has acquired a statutory title by possession may exercise it (*k*).

A mortgagor or incumbrancer on redeeming may now, whenever the mortgage was executed, notwithstanding any stipulation to the contrary, require the mortgagee to transfer the mortgage to a third person (*l*).

See BUILDING SOCIETIES—FRIENDLY SOCIETIES.

Requisitions.

1. *On the payment off of the mortgage money secured on the Whiteacre Farm no reconveyance appears to have been executed; the mortgagee must therefore be a party to the conveyance to the purchaser so as to pass the legal estate vested in him.*

2. *As no reconveyance of Blackacre has ever been executed, and as the mortgage money was paid off within* 13 *years from the present time, the vendor must deliver a further abstract showing in whom the legal estate in the premises is now vested, and such person must concur in the conveyance to the purchaser.*

(*h*) *The Old Battersea and District Building Society* v. *The Commissioners of Inland Revenue*, [1898] 2 Q. B. 294; 67 L. J. Q. B. 696; 78 L. T. 746.

(*i*) *Sands* to *Thompson*, 22 Ch. D. 614; 52 L. J. Ch. 406; 48 L. T. 210; 31 W. R. 397; Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 25.

(*k*) *Fletcher* v. *Bird*, Fisher on Mortgages, 6th ed. para. 2060.

(*l*) The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 15, as amended by the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 12.

RECOVERIES.

See FINES AND RECOVERIES.

RE-ENTRY.

See LEASEHOLD PROPERTY.

REGISTRATION OF DEEDS AND WILLS.

(i) Middlesex.

The Middlesex Registry Act, 1708 (*m*), provides for the registration of all deeds, conveyances, and wills, whereby any hereditaments in the county of Middlesex may be in any way affected. A declaration vesting property in new or continuing trustees requires registration (*n*), as also does an appointment under a power (*o*), an equitable mortgage (*p*), and a memorandum of further charge (*q*), but a mere agreement to assign as security does not require registration (*r*); and where there is merely an equitable mortgage created by deposit of title deeds there is no instrument to register.

A purchaser for value who has notice of a prior unregistered assurance cannot obtain priority to such unregistered assurance by registering his own deed first. In such a case the latter purchaser is compelled to hold the legal estate he has thus acquired as trustee for the former purchaser (*s*); but the mere entry on the register does not itself con-

(*m*) 7 Anne, c. 20.
(*n*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (4).
(*o*) *Scrafton* v. *Quincey*, 2 Ves. sen. 413.
(*p*) *Neve* v. *Pennell*, 33 L. J. Ch. 19; 11 W. R. 986; 2 H. & M. 170; 2 N. R. 508.
(*q*) *Moore* v. *Culverhouse*, 6 Jur. (N. S.) 115; 29 L. J. Ch. 419; 27 Beav. 639.
(*r*) *Wright* v. *Stanfield*, 27 Beav. 8; 5 Jur. (N. S.) 5; 28 L. J. Ch. 183; 32 L. T. 171.
(*s*) *Le Neve* v. *Le Neve*, 1 Ves. sen. 64; 3 Atk. 646; Amb. 436; 2 W. & T. 175

stitute notice, and a mortgagee who obtains the legal estate will not lose his priority in consequence of a prior registered equitable incumbrance of which he had no notice when he advanced his money (*t*).

In the case of a will, a devisee has six months from the death of a testator dying within Great Britain, and three years from the death of one dying at sea or beyond the seas, within which to register the will. If the will be not registered within the prescribed time, an assurance for value from the heir-at-law takes priority over an assurance from the devisee. The doctrine of notice applies in this case as well as in the case of deeds, and a purchaser having notice of a will cannot gain priority over the devisees by registering a conveyance from the heir-at-law, but is considered a trustee for the devisees.

The Act does not extend to copyhold estates, or to leases at a rack-rent, or to any lease not exceeding twenty-one years where the actual possession and occupation goes along with the lease, or to any of the chambers in Serjeant's Inn, the Inns of Court or Inns of Chancery (*u*), nor to lands in the City of London; and registration under the Land Transfer Acts renders unnecessary registration in the Middlesex Registry (*x*).

(ii) Yorkshire.

The registration of assurances relating to lands in Yorkshire was originally provided for by various statutes during the first half of the 18th century (*y*). Such statutes are now repealed and consolidated by the Yorkshire Registries Act, 1884 (*z*). The equitable rules with regard to notice, which, as stated above, still apply to lands in Middlesex, prevailed up to the 31st December, 1884, under the repealed statutes.

(*t*) *Bedford* v. *Backhouse*, 2 Eq. Abr. 615; Kelynge, 5.
(*u*) 7 Anne, c. 20, s. 17.
(*x*) Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), Sched. 1, para. 1.
(*y*) 2 & 3 Anne, c. 4; 6 Anne, c. 20; 6 Anne, c. 62; and 8 Geo. 2, c. 6.
(*z*) 47 & 48 Vict. c. 54.

The following, besides ordinary assurances (such as conveyances, mortgages, transfers and wills), require to be registered: Declaration vesting property in new or continuing trustees (*a*); enlargement of a term into fee simple; memorandum of charge; deed of consent to the discharge of a trustee; statutory receipt operating as a reconveyance; private Act of Parliament relating to land; inclosure award; order of the Ministry of Agriculture creating a rentcharge under the Improvement of Land Act, 1864; order of Court relating to land; certificate of appointment of trustee in bankruptcy; affidavit of vesting under any Act of Parliament (*b*), and an equitable mortgage created by deposit only (*c*).

All assurances registered under the Act of 1884 have priorities according to the date of registration, and every will entitled to be registered under the Act has priority according to the date of the death of the testator if registered within six months, or, if not so registered, according to the date of registration. All priorities given by the Act have full effect except in case of fraud, and no persons claiming any legal or equitable interest by priority of registration lose such priority in consequence of their having been affected with actual or constructive notice (*d*).

Notice of a will may be registered in cases where the devisees are unable to register the will within six months, and in such cases the subsequent registration of the will may take place within two years of the testator's death, and the date of the registration of the notice is deemed to be the date of registration of the will (*e*).

The tacking of mortgages, which, after having been abolished as regards lands generally by the Vendor and Purchaser Act, 1874 (*f*), had been re-introduced by the Land Transfer Act, 1875 (*g*), was, by the Yorkshire

(*a*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (4).
(*b*) *Ibid.* s. 3.
(*c*) 47 & 48 Vict. c. 54, s. 7.
(*d*) *Ibid.* s. 14.
(*e*) *Ibid.* s. 11.
(*f*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 7.
(*g*) 38 & 39 Vict. c. 87, s. 129.

Registry Act, 1884, abolished as regards lands in Yorkshire (*h*).

Unlike the Middlesex Act, the Yorkshire Acts apply to equitable mortgages created by deposit only, but they do not apply to lands of copyhold tenure or to leases not exceeding twenty-one years.

(iii) As to both Middlesex and Yorkshire.

Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law, an assurance of such land to a purchaser or mortgagee by the devisee, or by some one deriving title under him if registered before, takes precedence of any assurance from the testator's heir-at-law (*i*).

The Middlesex and Yorkshire Registry Acts do not apply to lands registered under the Land Transfer Act, 1875 (*k*), but do apply to estates and interests excepted from the effect of registration under a possessory or qualified title, and to the unregistered reversion on a registered leasehold title, and to dealings with incumbrances created prior to the registration of the land (*l*).

(iv) The Bedford Level.

Assurances relating to land situate in the district known as the Bedford Level require registration in the Bedford Level office (*m*); but even if not so registered they are valid for all purposes except for entitling the grantees to the privileges conferred by the Bedford Level Act (*n*).

Requisition.

No memorandum of the registration in Middlesex [*Yorkshire*] *of the conveyance to the vendor is abstracted. Has this deed been registered? If it has, what is the reference? If not, it must be at once registered at the vendor's expense.*

(*h*) 47 & 48 Vict. c. 54, s. 16.
(*i*) 37 & 38 Vict. c. 78, s. 8. (*k*) 38 & 39 Vict. c. 87, s. 127.
(*l*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), Sched. 1.
(*m*) 15 Car. 2, c. 17, s. 8.
(*n*) *Willis* v. *Brown*, 8 L. J. Ch. 321; 10 Sim. 127.

RELEASE.

A release is a discharge or conveyance of a man's right in lands or tenements to a person who has already an estate therein. It can only be made by deed. A joint tenant or coparcener may release his undivided share to his co-owner; but as tenants in common hold separate shares they cannot release to one another. A reversion or remainder or any other expectant estate may be released, as also may such rights as easements, *profits à prendre*, and rentcharges.

The old form of conveyance by lease and release is still occasionally met with in the perusal of abstracts : The lease consists of a bargain and sale for a year of the property proposed to be conveyed, expressed to be for a nominal consideration paid by the bargainee to the bargainor. The effect of this was to transfer the use, and this, under the Statute of Uses (*o*), passed the legal estate to the bargainee for one year, and enabled the bargainor to subsequently release to the bargainee, thus obviating the necessity of livery of seisin. The lease was required by the Statute of Frauds to be in writing (*p*), but prior to the 1st January, 1845, there was no necessity for its being by deed. Since that date, however, a deed has been necessary for the lease (*q*), as it always has been for the release.

The release usually contained a recital of the lease, and such a recital contained in a release executed before the 15th May, 1841, is conclusive evidence that the lease was made and executed (*r*). A new kind of conveyance was introduced by a statute passed in 1841. It consisted of a release expressed to be made in pursuance of that Act (*s*), and operated at law and in equity in all respects as if the releasing parties had executed the usual lease for a year, although no such deed was in fact executed. The Act applied to all releases executed on or after 15th May, 1841, and before the 7th August, 1874, when it was repealed (*t*).

(*o*) 27 Hen. 8, c. 10.
(*p*) 29 Car. 2, c. 3, ss. 1, 2.
(*q*) 7 & 8 Vict. c. 76, s. 4; 8 & 9 Vict. c. 106, s. 3.
(*r*) 4 & 5 Vict. c. 21, s. 2.
(*s*) *Ibid.* s. 1.
(*t*) Statute Law Revision Act (No. 2), 1874 (37 & 38 Vict. c. 96).

Another form of conveyance which it is convenient to mention here was introduced by "An Act to Simplify the Transfer of Property" (*u*); by such Act every person or corporation was enabled to convey by deed, without livery of seisin, or enrolment, or a prior lease, all such freehold land as he might, before the passing of the Act, convey by lease or release. It was only in operation from the 1st January, 1845, until the 30th September of the same year, when the Real Property Act, 1845, provided that all corporeal hereditaments should, as regards the immediate freehold thereof, be deemed to lie in grant as well as livery (*w*).

Requisitions.

1. *The release, dated the 1st May, 1841, does not contain a recital of the lease upon which it was intended to have been founded: was any such lease ever executed?*

2. *The release, dated 1843, is not expressed to be made in pursuance of the statute 4 & 5 Vict. c. 21, and could not, therefore, operate under that Act: was any lease ever executed upon which such release was founded?*

3. *Although the release of 1843 was not founded on a lease for a year, and was not expressed to be made in pursuance of the statute 4 & 5 Vict. c. 21, unless some acknowledgment of the right of the releasor has been given the vendor would appear to have acquired a statutory title: a statutory declaration must be made proving that no such acknowledgment has been given.*

REMAINDERS.

See CONTINGENT REMAINDERS.

(*u*) 7 & 8 Vict. c. 76, s. 2. (*w*) 8 & 9 Vict. c. 106, ss. 1, 2.

REMOTENESS OF LIMITATION.

See PERPETUITIES.

RENT.

See APPORTIONMENT—LIMITATION, STATUTES OF.

RENTCHARGES.

See ANNUITIES AND RENTCHARGES.

RESCISSION.

A purchaser has, apart from condition, a right to repudiate his contract if the vendor cannot make a good title, but he must do so as soon as he finds it out (*x*).

Misrepresentation by a vendor which is fraudulent, or the fraudulent concealment of a material fact which a purchaser has no means of knowing, is a ground for rescission of a contract for sale of real estate, even after completion (*y*). It is not necessary, in order to have an executory contract set aside on the ground of misrepresentation, to prove that the party who obtained the contract knew at the time the representation was made that it was false (*z*).

Where a contract contains a condition that if any requisition is persisted in the vendor may rescind, and that if any mistake shall appear to have been made in the description of the property or of the vendor's interest in it, such mistake shall not vitiate the sale, but compensation shall be given, the vendor has a right to rescind on an objection being persisted in, and specific performance with compensa-

(*x*) *Halkett* v. *Earl of Dudley*, [1907] 1 Ch. 590.
(*y*) *Edwards* v. *McLeay*, 14 R. R. 261; G. Coop. 312; 2 Sw. 287.
(*z*) *Reese River Silver Mining Co.* v. *Smith*, L. R. 4 H. L. 64; 39 L. J. Ch. 849; 17 W. R. 1042; *Redgrave* v. *Hurd*, 20 Ch. D. 1; 51 L. J. Ch. 113; 45 L. T. 485; 30 W. R. 251.

tion will not be ordered (*a*); but where, fraud being absent, such a contract is executed and it is too late to obtain rescission, a condition for compensation will still be enforceable, unless so expressed as to be limited to defects discovered before the conveyance: apart from condition, compensation for defect in title cannot be recovered after conveyance (*b*).

A vendor cannot rescind under a condition for rescission if the purchaser who has taken objection waives it promptly on being informed of the inability of the vendor to comply with it (*c*).

Where property is sold subject to a condition empowering the vendor by notice to rescind the sale if any objection should be insisted on which the vendor is unable or unwilling to remove, and the purchaser insists on an objection (such as misrepresentation, which the Court finds did not exist), it is not too late for the vendor to give notice of rescission immediately after the writ has been issued in an action by the purchaser, and it makes no difference that the power to rescind is not by the condition expressed to arise, notwithstanding any intermediate litigation (*d*), but a condition that notwithstanding any pending proceeding the vendor is to be at liberty to rescind without interest or costs of investigating the title does not oust the jurisdiction of the Court to order the vendors to pay the costs of the proceedings (*e*). A vendor must, in order to annul a contract on the ground of unwillingness, show some reasonable ground for such unwillingness. He cannot annul the contract, *brevi manu*, without attempting to answer any of the requisitions made by the purchaser (*f*); some reasonable ground for his unwillingness must exist.

(*a*) *Mawson* v. *Fletcher*, L. R. 6 Ch. 91; 40 L. J. Ch. 131; 23 L. T. 545; 19 W. R. 141.

(*b*) *Clayton* v. *Leech*, 41 Ch. D. 103; 61 L. T. 69; 37 W. R. 663.

(*c*) *Duddell* v. *Simpson*, L. R. 2 Ch. 102; 36 L. J. Ch. 70; 15 L. T. 305; 15 W. R. 115.

(*d*) *Isaacs* v. *Towell*, [1898] 2 Ch. 285; 67 L. J. Ch. 508; 78 L. T. 619.

(*e*) *Re Spindler and Mears' Contract*, [1901] 1 Ch. 908; 70 L. J. Ch. 420; 84 L. T. 295; 49 W. R. 410.

(*f*) *Duddell* v. *Simpson*, L. R. 2 Ch. 102; 36 L. J. Ch. 70; 15 L. T. 305; 15 W. R. 115.

Before a vendor will be allowed to rescind under such a condition he must satisfy the Court that he entered into the contract in ignorance of some material fact or document, or under some mistaken notion that he was entitled to sell and could make a title; there must be no failure of duty on his part, no element of shortcoming, and he must have omitted nothing which an ordinarily prudent man, having regard to his contractual relations with other persons, is bound to do (*g*). The right to rescind is confined to objections first taken after the abstract is delivered (*h*), and it may be lost by waiver or acquiescence in the contract (*i*); therefore, in replying to a requisition where a difficulty exists, the vendor's solicitor should take care to expressly reserve the right of the vendor under the condition.

The usual condition for rescission does not enable a vendor to rescind the contract in a case where he fails to show any title whatever (*k*), nor where the purchaser merely insists upon an incumbrance being discharged (*l*).

See PARTICULARS OF SALE.

RESTRAINT ON ANTICIPATION.

See ANTICIPATION—RESTRAINT AGAINST.

(*g*) *Re Jackson and Haden's Contract*, [1906] 1 Ch. 412; 75 L. J. Ch. 226; 94 L. T. 418; 54 W. R. 434; *Quinion* v. *Horne*, [1906] 1 Ch. 596; 75 L. J. Ch. 293; 54 W. R. 344.

(*h*) *Tanner* v. *Smith*, 4 Jur. 310; 10 Sim. 410.

(*i*) *McCulloch* v. *Gregory*, 24 L. J. Ch. 246; 24 L. T. (O. S.) 307; 3 W. R. 231; 1 K. & J. 286; 3 Eq. R. 495; *Lane* v. *Debenham*, 17 Jur. 1005; 22 L. T. (O. S.) 143; 1 W. R. 465; 11 Ha. 188.

(*k*) *Bowman* v. *Hyland*, 8 Ch. D. 588; 47 L. J. Ch. 581; 39 L. T. 90; 26 W. R. 877.

(*l*) *Re Jackson and Oakshott*, 14 Ch. D. 851; 49 L. J. Ch. 523; 28 W. R. 794.

RESTRICTIONS AS TO USER OF LAND.

Apart from covenants entered into by lessor or lessee, the rules relating to which stand on an altogether different footing, a restriction as to user of land may arise—(1) by an agreement entered into by an owner of land; (2) by purchasing with notice of such an agreement entered into by a former owner; (3) by statute.

The burden of an affirmative covenant, that is to say, a covenant to do some act, such as to build a wall, never runs with the land, and a purchaser even with notice will not be bound by it (*m*). But where a purchaser takes land in respect of which a restrictive covenant of a negative description has been entered into by a former owner, he is bound by it in equity unless he obtains the legal estate for value without notice actual or constructive (*n*); but where a restrictive covenant has been openly broken for upwards of twenty years it will be presumed that there has been a waiver or release of such covenant (*o*).

Where, as is often the case in relation to building estates, a vendor has sold plots to different persons, and on some plots restrictions meant for the benefit not only of the vendor but for the common advantage of the several purchasers are imposed, any of such purchasers and their assigns can enforce them *inter se* for their own benefit (*p*).

Restrictive covenants may be enforced by one purchaser, or his successor in title, against another or his successor, irrespective of the dates of the purchases—(1) if both parties derive title under the same vendor; and (2) if before selling the lands owned by the parties the vendor laid out his estate for sale in lots subject to restrictions intended to be imposed which are consistent only with a general

(*m*) *Haywood* v. *Brunswick Permament Building Society*, 8 Q. B. D. 403; 51 L. J. Q. B. 73; 45 L. T. 699; 30 W. R. 299; 46 J. P. 356.

(*n*) *Tulk* v. *Moxhay*, 18 L. J. Ch. 83; 13 L. T. (O. S.) 21; 13 Jur. 89; 2 Ph. 774; 1 H. & Tw. 105; *London and South Western Rail. Co.* v. *Gomm*, 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620

(*o*) *Hepworth* v. *Pickles*, [1900] 1 Ch. 108; 69 L. J. Ch. 55; 81 L. T. 818; 48 W. R. 184.

(*p*) *Collins* v. *Castle*, 36 Ch. D. 243; 57 L. J. Ch. 76; 57 L. T. 764; 36 W. R. 300.

scheme of development; and (3) if the restrictions were intended by the vendor to be for the benefit of the lots to be sold; and (4) if both parties or their predecessors in title purchased from the vendor on the footing that the restrictions were to enure for the benefit of the other lots included in the estate (*q*).

Where a vendor puts up building land for sale in lots subject to restrictive covenants, it is a question of fact to be deduced from all the circumstances of the case whether the restrictions are merely matters of agreement between him and his purchasers imposed for his own benefit and protection, or are meant by him, and understood by the buyers, to be for the common advantage of the several purchasers; and the retainer by the vendor of some part of the property is only an element, though an important one, to be taken into consideration with other circumstances in ascertaining the intention; for though the vendor may not part with his whole estate, there may be circumstances which show that the intention was that each purchaser should be entitled to enforce the restriction against the vendor himself as well as against purchasers. Where, therefore, a land company put up freehold building sites for sale by auction in lots, subject to particulars and conditions of sale which, in the view of the Court, constituted an invitation to the public to come in and purchase on the footing that the whole of the property offered for sale was to be bound by one general law affecting the character of the buildings to be erected thereon, and at the auction some of the lots were sold and some were not, and after the sale the vendors claimed the right to sell the unsold lots free from the restrictive covenants in case they desired to do so, it was held that a purchaser who had bought one of the lots sold at the auction, but had not completed his purchase, was entitled to the benefit of a contract by the vendors, implied in the conditions of sale, that the vendors would, as to the lots unsold at the auction, observe stipulations similar to those which the purchasers of those lots, had they

(*q*) *Elliston* v. *Reacher*, [1908] 2 Ch. 374; 77 L. J. Ch. 617; 99 L. T. 346.

been sold, would have been bound to covenant to observe; and it was held also that the purchaser was entitled to have such obligations of the vendors expressed in the conveyance to him of his lot (*r*).

Where, however, the subsequent acts of the person entitled to the benefit of the restriction, or of those claiming under him, have so altered the character and condition of the adjoining lands, that with reference to the land conveyed the restriction ceases to be applicable, the Court will no longer enforce it (*s*).

As a general rule, a purchaser of property sold without the particulars disclosing restrictive covenants, is not bound to accept the title if the property is found to be subject to such covenants (*t*) : even where the title purports to be accepted by the contract (*u*).

The benefit of a restrictive covenant annexed to land runs with it in equity as well as at law, and passes by a conveyance of the land without proof of special bargain or representation (*x*).

See COVENANTS.

Requisitions.

1. *It would appear that the premises contracted to be sold form part of a building estate. Although no restrictive covenants appear on the title deduced, yet, having regard to the shortness of the title offered to the purchaser, he should be satisfied that the building scheme did not in fact embrace any mutual covenants between the purchasers of the various lots.*

(*r*) *Re Birmingham and District Land Co. and Allday*, [1893] 1 Ch. 342; 62 L. J. Ch. 90; 67 L. T. 850; 41 W. R. 189; 3 R. 84.

(*s*) *Duke of Bedford* v. *Trustees of the British Museum*, 2 L. J. Ch. 129; 2 My. & K. 552; *Sayers* v. *Collyer*, 28 Ch. D. 103; 54 L. J. Ch. 1; 51 L. T. 723; 33 W. R. 91; 49 J. P. 244; *Knight* v. *Simmonds*, [1890] 2 Ch. 294; 65 L. J. Ch. 583; 74 L. T. 563; 44 W. R. 580.

(*t*) *Re Higgins and Hitchman's Contract*, 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; 46 J. P. 805; *Ellis* v. *Rogers*, 29 Ch. D. 661; 53 L. T. 377.

(*u*) *Re Haedicke and Lipski's Contract*, [1901] 2 Ch. 666; 70 L. J. Ch. 811; 85 L. T. 402; 50 W. R. 20.

(*x*) *Rogers* v. *Hosegood*, [1900] 2 Ch. 388; 69 L. J. Ch. 652; 83 L. T. 186; 48 W. R. 659.

2. *Some of the lots put up for sale by auction not having been sold, the vendor must observe the stipulations as to the user of the unsold lots which would have been binding upon a purchaser of those lots, and must not sell, mortgage, or lease them otherwise than subject to such stipulations: the purchaser will require these obligations of the vendor to be expressed in the conveyance.*

3. *The purchaser claims to be entitled to repudiate his contract to purchase on the ground that the restrictions on the user of the property were not disclosed in the particulars. Without prejudice to his right to rescind, he is, however, prepared to consider an offer by the vendor of an abatement in the purchase-money as compensation.*

REVERSIONARY INTERESTS.

On a purchase of a reversionary interest in personalty the purchaser is entitled to an abstract of the wills, deeds, and other documents relating to the title, as on a purchase of real estate, and the abstract must in all cases commence with the document creating the interest dealt with.

The purchaser or mortgagee of a reversionary interest created by will, of which the trustees are also executors, should inquire of the trustees whether the testator's funeral and testamentary expenses, debts, and pecuniary legacies have been paid; and should also, in all cases where legacy or succession duty is payable, ascertain whether or not it has been paid. Apart from special contract, these duties would on a sale fall upon the purchaser (*y*). Inquiry should also be made of the trustees of the will or settlement whether they, or, so far as they are aware, their predecessors, have received notice of any bankruptcy, assignment, or other dealing with the interest of the beneficiary, and their reply should be obtained in writing. The pur-

(*y*) *Re Langham*, 60 L. J. Ch. 110; 39 W. R. 156.

chaser or mortgagee should also require an admission in writing by the trustees that they hold the property upon the trusts shown in the abstract, and that they claim no lien for costs or otherwise : it is most important to obtain this, but it must be remembered that trustees are under no legal obligation to furnish it (*z*). Notice in writing of the assignment or other dealing with the interest must be given to all the trustees (*a*).

Where any part of the reversionary funds being dealt with consists of stocks or shares, a distringas should be obtained; and where any part consists of a fund in Court a stop order must be obtained, as priority in respect of such funds depends upon the date of the stop order, and not upon the date of notice to the trustees.

See DISTRINGAS AND STOP ORDER—EXPECTANT HEIRS.

Requisitions.

1. *What children did the testator A. B. leave? Evidence of this and of the identity of Mrs. B. as his widow, and of Mrs. C. as one of his children, must be given.*

2. *At what sum was the testator's personal estate sworn for purposes of probate? The probate must be produced.*

3. *The receipt for legacy duty on the Great Northern Debenture Stock must be produced.*

4. *Has the testator's real estate been sold, and, if so, what sum did it realize?*

5. *Have the testator's debts and funeral expenses and the legacies given by his will been paid?*

6. *Of what do the trust funds now consist?*

7. *The appointment of the present trustees of the will must be duly verified, and copies or abstracts of the documents showing their title must be supplied.*

8. *The proposed mortgagor's solicitors must supply*

(*z*) *Low* v. *Bouverie*, [1891] 3 Ch. 82; 60 L. J. Ch. 594; 65 L. T. 533; 40 W. R. 50.

(*a*) *Dearle* v. *Hall*, 2 L. J. Ch. 62; 3 Russ. 1; *Smith* v. *Smith*, 2 C. & M. 231; 3 L. J. Ex. 42; 4 Tyrw. 52.

a statement in writing by the trustees of the will to the effect that they have no notice of any dealing with the widow's life estate, or with Mrs. C.'s interest in the funds.

9. *The trustees of the will must state in writing that they have not received notice of any receiving order, bankruptcy, or other circumstances which could prevent Mrs. B. or Mrs. C. dealing with their respective interests in the property, and that they personally have no claim for costs or other lien on the trust funds.*

10. *The trustees of the will must give an authority to enable the proposed mortgagee to inquire whether the funds are free from distringas in the books of the companies or bodies with whom the same are invested.*

11. *The trustees' admission that they hold the trust fund upon the trusts declared by A. B.'s settlement must be furnished to the purchaser.*

12. *The age of Mrs. X., the tenant for life, must be proved by certificate in the usual way.*

13. *Was notice of the assignment of* 19 , *to the vendor duly given to the executors and trustees of A. B.'s will?*

14. *A statutory declaration must be made by the vendor proving that he has not been bankrupt, nor assigned, charged, or otherwise dealt with the interest contracted to be sold.*

15. *The fund appears to be subject to a distringas* [*stop order*] *in favour of A. B.: The vendors must at their own expense show A. B.'s title, and his claim must be satisfied before completion.*

RIGHTS OF WAY.

See EASEMENTS AND PROFITS A PRENDRE.

ROOT OF TITLE.

The commencement of title is, in cases where a contract or conditions of sale exist, almost invariably the subject of a special stipulation which precludes any objection or requisition being made by the purchaser as to the document offered as the root of title.

Apart from contract, a purchaser has no right to the production or to any abstract or copy of any deed, will, or other document dated or made before the time prescribed by law or stipulated for the commencement of title, even though such document creates a power subsequently exercised by an instrument abstracted; and he may make no requisition or objection in respect of the title prior to that time or in respect of any such document, notwithstanding that it is recited or covenanted to be produced. He must likewise assume, unless the contrary appears, that all recitals in the abstracted instruments of documents forming part of the prior title are correct, and give all the material contents of such documents, and that such recited documents were duly executed and perfected (*b*); notwithstanding this, or even an express stipulation precluding objection to the prior title, where the purchaser discovers, either from recitals in abstracted documents or from information *aliunde*, any defect in the vendor's title which the latter is unwilling or unable to remedy, a Court of Equity will not assist the vendor by ordering specific performance, but will leave the plaintiff to his remedy at law. On the other hand, the purchaser being bound by the condition cannot recover his deposit (*c*).

The first document appearing in an abstract should deal with the entire legal and equitable estates, or, at all events, should afford satisfactory evidence relating to both. This is often of great importance where the length of title is restricted, as it commonly is, by condition.

(*b*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (3), (9).
(*c*) *Re Scott and Alvarez's Contract*, [1895] 2 Ch. 603; 64 L. J. Ch. 821; 73 L. T. 43; 43 W. R. 694; 12 R. 474.

In case of freeholds, the best roots of title are—

(1) A legal mortgage in fee.
(2) A purchase deed.
(3) A settlement for value.
(4) An appointment reciting the power under which it is made (*d*).
(5) An exchange or partition made by deed since the 1st October, 1845, and not under the Inclosure Acts.
(6) A will, but in this case evidence of seisin at the date of death is necessary.
(7) A disentailing assurance containing a recital of the deed creating the entail.

The following are not satisfactory roots of title :—

(1) A voluntary conveyance (*e*), if recent.
(2) A disentailing assurance not accompanied by the deed creating the entail or containing a full recital of it.
(3) Awards of inclosure and orders of partition or exchange under the Inclosure Acts, 1845 to 1882 (*f*), which depend on the title of the land inclosed, allotted or exchanged.
(4) A mortgage by demise.
(5) A lease.

Where a contract provides that the title shall commence with a specified deed the nature of the deed should be stated. If it is not stated and it turns out that the deed is of such a nature as would have influenced the purchaser in determining whether he would agree to accept a title commencing within forty years, the omission is misleading and the purchaser will not be bound to accept a title commencing with that deed (*g*).

In case of copyholds, the proper root of title is a surrender followed by admittance, or a devise followed by admittance.

(*d*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (3).
(*e*) *Re Marsh and Earl Granville*, 24 Ch. D. 11; 53 L. J. Ch. 81; 48 L. T. 947; 31 W. R. 845.
(*f*) *Jacomb* v. *Turner*, [1892] 1 Q. B. 47.
(*g*) *Re March and Earl Granville*, 24 Ch D. 11; 53 L. J. Ch. 81; 48 L. T. 947; 31 W. R. 845.

In case of leaseholds, the lease must always be abstracted, even if, in cases of long terms, the devolutions are not continued from the commencement, but only abstracted for a reasonable period. Subject to the original lease being also abstracted an assignment or mortgage of a lease forms a good root of title.

Requisitions.

1. *The title disclosed is too short. A further abstract taking it back for at least forty years must be supplied.*

2. *The seisin of the testator A. B., free from incumbrances at the time of his death, of the property contracted to be sold, must be proved by a statutory declaration by some person acquainted with the facts.*

3. *Condition No. states that the title shall commence with an indenture of , 19 , but does not describe such indenture as being what it turns out to be—a disentailing deed containing no recital of the deed creating the entail. It is not a satisfactory root of title, and the deed creating the entail must be abstracted.*

SALES BY THE COURT.

See ORDER.

SATISFIED TERMS.

See TERMS, ATTENDANT AND SATISFIED.

SEARCHES.

Proper searches should always be made on behalf of a purchaser or mortgagee prior to completion; a solicitor may be held liable for loss which is occasioned to his client by the omission or negligent performance of this duty.

The number of searches necessary to be made has been considerably reduced by the Land Charges Act, 1900, which came into operation on the 1st July, 1901. Since this date searches for Judgments and Crown Debts have been rendered unnecessary.

The following are the usual searches made in the cases specified below :—

On a Purchase from an Owner in Fee.

Search.	*Place for Search.*	*How Registered.*	*Extent of Search.*
Lis Pendens ...	Land Registry Office.	Person whose estate is affected thereby.	5 years last past.
Annuities and rent-charges.	Do.	Do.	From commencement (26th April, 1855).
Writs of execution and orders affecting land.	Do.	Person whose land is affected thereby.	5 years last past.
Deeds of arrangement.	Do.	Do.	12 years last past.
Land charges ...	Do.	Person beneficially entitled to first estate of freehold.	From commencement (1st Jan., 1889).
Registration under Land Transfer Acts.	Do.	By reference to map.	
Bankruptcy petitions.	Bankruptcy Court.	Person against whom petition was presented.	At discretion.

Note.—In all the above cases it is usually considered sufficient to search only in the names of persons entitled since the last purchase for value and for bankruptcy petitions for twelve years last past.

On a purchase from a tenant in tail, in addition to the searches indicated above in the case of a purchase from an owner in fee, search should also be made at the Central Office for disentailing deeds.

On a purchase from a trustee or mortgagee, the only search which need be made against a trustee is for *lis*

pendens. So also if the vendor is a mortgagee, a search for *lis pendens* is generally considered sufficient, but a search should be made for bankruptcies and deeds of arrangement, unless the vendor's position is so well known as to render this useless.

A search for land charges should be made against the mortgagor, as such charges have usually priority over a mortgage.

On a purchase from a mortgagor and mortgagee, search should be made against each as if he were selling alone.

If the property is situate in Yorkshire or Middlesex, the local registry should also be searched to ascertain whether any documents are registered which do not appear on the abstract of title.

On a mortgage, the same searches should be made as on a purchase.

On a transfer of mortgage, the same searches should be made against the mortgagee as on a purchase, and if the mortgagor joins in the transfer, searches should be made against him, as in the case of a purchase.

On a reconveyance, the same searches should be made as on a purchase from the mortgagee.

On a purchase of settled land, in addition to the usual searches, search for land charges should be made at the Land Registry Office against the tenant for life and his predecessors as such (*h*).

On a purchase of leasehold property, the same searches are necessary as in the case of freeholds.

On a purchase of copyhold property, the same searches are made as in the case of freeholds; and, in addition, the Court

(*h*) The Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 10.

rolls of the manor are searched from the last purchase for value of the property.

Certain other searches are sometimes made and some are necessary or proper in particular cases, *e.g.* :

On a purchase of land which has been in settlement, a search at the office of the Ministry of Agriculture for charges under the Improvement of Land Act, 1864 (*i*), created before the 1st of January, 1889, is now unnecessary.

On a purchase of land in a district outside the metropolis, not being purely agricultural, search at the office of the local authority for charges under the Public Health Act, 1875 (*k*). Expenses under sect. 257 of this Act are not land charges within the meaning of the Land Charges Registration and Searches Act, 1888, so as to require registration under that Act (*l*). Also search at the same place for charges under the Private Street Works Act, 1892 (*m*).

On a purchase of agricultural land, a search at the office of the Ministry of Agriculture for charges under the Public Moneys Drainage Acts, 1846 to 1856, created before 1889 is now unnecessary (*n*).

On a transfer of a mortgage or charge effected by a company registered under the Companies Acts, search at the Joint Stock Company's Registry whether the mortgage is duly registered.

Where a search is necessary against a woman married before 1883, searches subsequent to the marriage should be made in the name of the husband, and with regard to annuities, in the joint names of husband and wife. If the woman was married after 9th August, 1870, and the property is freehold, copyhold, or customary freehold, and acquired by her as heiress of an intestate, the search will be

(*i*) 27 & 28 Vict. c. 114.
(*k*) 38 & 39 Vict. c. 55, s. 257.
(*l*) *Reg.* v. *Vice-Registrar of Office of Land Registry*, 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. 117; 38 W. R. 236.
(*m*) 55 & 56 Vict. c. 57, s. 6.
(*n*) The Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), s. 13.

against her alone; as it will also be if she was married or acquired the property after 1882.

Searches at the Land Registry Office may be made by delivering in the office a requisition, whereupon an official searches and makes and files a certificate of the result, of which office copies are issued; such certificates are conclusive in favour of a purchaser, including in such term a lessee or mortgagee, intending purchaser or mortgagee, or other person who, for valuable consideration, takes or deals with property, as against persons interested under or in respect of judgments, deeds, or other matters or documents; and where a solicitor obtains an office copy of such certificate, he is not answerable in respect of any loss which may arise from error in the certificate (*o*).

Statutory charges, being legal incumbrances on the property, are binding, even as against a purchaser for value without notice, and ought therefore to be shown on the abstract of title. Neither vendors nor their solicitors are bound to answer requisitions asking whether there is, to the knowledge of the vendors or their solicitors, any incumbrance or other matter affecting the property not disclosed by the abstract (*p*). Such inquiry, which formerly was common form, has now been abandoned; but it is well to remind the vendors' solicitors that the duty to disclose on the abstract all incumbrances (*q*) includes statutory charges; and this may conveniently be done by a requisition.

See JUDGMENTS, WRITS AND ORDERS, REGISTRATION OF—LAND IMPROVEMENT ACTS—STREET IMPROVEMENTS.

Requisition.

No charge for drainage or improvements under the Public Health Act or any similar statute being referred to on the abstract, it is presumed that the vendor's solicitor has no knowledge that such charge exists.

(*o*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 2; 51 & 52 Vict. c. 51), s. 17.

(*p*) *Re Ford and Hill*, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371.

(*q*) See 22 & 23 Vict. c. 35, s. 24; 23 & 24 Vict. c. 38, s. 8.

SEISIN.

Seisin is the feudal possession of land by the tenant of an estate in fee simple, in tail, or for life. The term does not apply to estates less than freehold, they being mere chattel interests entitling the tenant to possession only. For most purposes, however, seisin, in respect of estates of freehold, and possession, in respect of leasehold and other chattel interests, may be considered as identical.

A mortgagor in possession of a freehold tenement within a manor is not so seised of that tenement that on his death the lord of the manor is entitled to a heriot (*r*).

Seisin is proved by showing that leases or agreements followed by possession thereunder were granted or entered into, and by assessments to poor rate, or land tax, or by other similar evidence, tending to show that the person dealt with the land in question as having the legal possession of it.

SEPARATE ESTATE.

See MARRIED WOMEN.

SETTLED LAND.

The statutory powers enabling limited owners to deal with settled land now most frequently taken advantage of, are those contained in the Settled Land Acts, 1882 to 1890. These have, for most purposes, practically superseded the Settled Estates Act, 1877. Cases, however, occasionally arise in which the provisions of the last-mentioned statute are still resorted to, and as, prior to the passing of the Settled Land Act, 1882, the powers of the Settled Estates Act were constantly exercised, a statement of the effect of the statute will be necessary.

(*r*) *Copestake* v. *Hoper*, [1907] 1 K. B. 366.

Some of the chief differences between the Settled Estates Act and the Settled Land Acts are—

(1) Application to the Court is required in all cases under the former, except for leasing under sect. 46, while under the Settled Land Acts no such application is required except for the sale of the principal mansion-house and grounds where consent is not given by the trustees, and for leave to exercise the powers given by sect. 63 (*s*).

(2) No notice before exercising the powers for which the leave of the Court is not necessary, is required under the Settled Estates Act, such as is, in most cases, required under the Settled Land Acts.

(3) Tenants in dower and tenants in right of a wife seised in fee have certain powers under the Settled Estates Act which they have not under the Settled Land Acts.

(4) The Court cannot exercise the powers under the Settled Estates Act if they are expressly excluded (*t*) by the settlement, but the powers under the Settled Land Acts cannot be so excluded (*u*).

The Settled Land Acts.

The person who is for the time being under a settlement beneficially entitled to possession of settled land (including incorporeal hereditaments and an undivided share in land) for his life, is, for the purposes of the Settled Land Acts, the tenant for life of that land, and the tenant for life under that settlement (*x*). Possession includes the receipt of income, rents, and profits (*y*); therefore, a tenant for life may be "in possession" within the meaning of the Acts, notwithstanding a lease of the premises to a tenant. Land includes freeholds, copyholds, and leaseholds (*z*).

(*s*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.
(*t*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 38.
(*u*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 51.
(*x*) *Ibid.* s. 2 (5), (10), (i).
(*y*) *Ibid.* s. 2 (10), (i).
(*z*) 52 & 53 Vict. c. 63, s. 3.

Each of the following persons, if beneficially entitled and his estate or interest is in possession, has the powers of a tenant for life under the Acts (*a*).

(1) A tenant in tail.

(2) A tenant in fee simple with an executory limitation, gift or disposition over on failure of his issue, or in any other event.

(3) A person entitled to a base fee.

(4) A tenant for years determinable on life not holding under a lease at a rent.

(5) A tenant for the life of another not holding merely under a lease at a rent.

(6) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose.

(7) A tenant in tail after possibility of issue extinct.

(8) A tenant by the curtesy.

(9) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest on bankruptcy or other event.

(10) An infant seised of or entitled to possession of land (*b*).

(11) A person beneficially entitled to the income of land until sale under a settlement by way of trust for sale, and for the application of the proceeds or the income thereof, or of the income of the land until sale, or any part of such proceeds or income, for the benefit of any person for his life or any other limited period (*c*). In this case, however, an order

(*a*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 58 (1).
(*b*) *Ibid.* s. 59. (*c*) *Ibid.* s. 63 (1).

of the Court has, since the 2nd July, 1884, been necessary before the powers conferred by the section can be exercised (*d*).

As bearing on the subject of the investigation of title, the Acts may be conveniently considered under the following heads :—

(i) So far as they enable dispositions of settled land by sale, enfranchisement, exchange, or partition.

(ii) So far as they enable the grant of building, mining and other leases of settled land.

(iii) So far as they empower the tenant for life to mortgage the fee simple.

(iv) General provisions of the Acts affecting the above powers or any of them.

(i) Sales, Enfranchisements, Exchanges, and Partitions.

A tenant for life (subject to the general provisions stated below) (*e*)—

(1) May sell the settled land or any part of it, or any easement, right, or privilege relating to it.

(2) Where the settlement comprises a manor, may sell the seignory of any freehold land within the manor or the freehold and inheritance of any copyhold or customary land parcel of the manor with or without any exception or reservation of mines or minerals, or of any rights or powers relating to them, so as in every such case to effect an enfranchisement.

(3) May make an exchange of the settled land or any part of it for other land, including an exchange in consideration of money paid for equality of exchange; and

(4) Where the settlement comprises an undivided share in land, or under the settlement the settled land has come to be held in undivided shares, may concur in making partition of the entirety, including a parti-

(*d*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.
(*e*) P. 363.

tion in consideration of money paid for equality of partition (*f*).

Every sale must be made at the best price, and every exchange and partition for the best consideration that can reasonably be obtained (*g*). A sale may be made in one lot or in several lots, and either by auction or by private contract (*h*). The tenant for life may fix reserved biddings and buy in at an auction (*i*).

A sale, exchange, or partition may be made subject to any stipulations respecting title or evidence of title or other things (*k*). And any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals or their working, or with respect to any other thing, may be imposed by covenant, condition, or otherwise on the tenant for life and the settled land or any part of it, or on the other party and any land sold or given in exchange or on partition to him (*l*).

On an exchange or partition any easement, right, or privilege of any kind may be reserved or granted over or in relation to the settled land or other land, or an easement, right, or privilege may be given or taken in exchange or on partition for land, or for any other easement, right, or privilege of any kind (*m*); and such exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines and minerals (*n*).

An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privileged appendant or appurtenant to, or held or enjoyed with the land enfranchised or reputed so to be (*o*).

Settled land in England and Wales must not be given in exchange for land out of England and Wales (*p*).

A rentcharge may be reserved on a grant in fee simple for building purposes by a tenant for life (*q*).

(*f*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 3.
(*g*) *Ibid.* s. 4 (1), (2). (*h*) *Ibid.* s. 4 (3). (*i*) *Ibid.* s. 4 (4).
(*k*) *Ibid.* s. 4 (5). (*l*) *Ibid.* s. 4 (6).
(*m*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 5.
(*n*) Settled Land Act, 1882 (45 & 46 Vct. c. 38), s. 17 (2).
(*o*) *Ibid.* s. 4 (7).
(*p*) *Ibid.* s. 4 (8); 20 Geo. 2, c. 42, s. 3.
(*q*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 9.

(ii) Leases.

A tenant for life may (subject to the general provisions stated below (*r*)) lease the settled land or any part of it, or any easement, right, or privilege of any kind over or in relation to it for any purpose whatever, whether involving waste or not, for any term not exceeding—

(1) In the case of a building lease, 99 years.

(2) In the case of a mining lease, 60 years.

(3) In the case of any other lease, 21 years (*s*).

Every lease must be by deed, and be made to take effect in possession not later than 12 months after its date (*t*); but where the lease does not exceed three years, it may be under hand only (*u*).

Every lease must reserve the best rent that can reasonably be obtained, regard being had to any fine taken and to any money laid out, or to be laid out, for the benefit of the settled land, and generally to the circumstances of the case; and every lease must contain a covenant or agreement, as the case may be, by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time specified not exceeding 30 days (*x*).

A counterpart of every lease must be executed by the lessee and delivered to the tenant for life, of which execution and delivery, the execution of the lease by the tenant for life is made sufficient evidence (*y*).

A statement contained in a lease or in an indorsement thereon signed by the tenant for life respecting any matter of fact or of calculation under the Act in relation to the lease in favour of the lessee and of those claiming under him, is sufficient evidence of the matter stated (*z*).

Every building lease must be made partly in consideration of the lessee or some person by whose direction the lease is granted, or some other person having erected, or agreeing to

(*r*) P. 363.
(*s*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 6.
(*t*) *Ibid.* s. 7 (1).
(*u*) Settled Land Act, 1890 53 & 54 Vict. c. 69), s. 7 (iii).
(*x*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 7 (2), (3); Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7 (iii).
(*y*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 7 (4).
(*z*) *Ibid.* s. 7 (5).

erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by the Act for or in connection with building purposes (*a*); a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term (*b*).

When building land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(1) The annual rent reserved by any lease must not be less than 10*s*.

(2) The total amount of the rents reserved on all leases for the time being granted must not be less than the total amount of the rents, which, in order that the leases may be in conformity with the Act, ought to be reserved in respect of the whole land for the time being leased.

(3) The rent reserved by any lease must not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed (*c*).

A building lease or agreement for such a lease may contain an option, to be exercised within an agreed number of years, not exceeding 10, for the lessee to purchase the land leased at a price fixed at the time of the making of the lease or agreement, such price to be the best which can be reasonably obtained (*d*).

In a mining lease the rent may be made to vary according to the acreage worked, or the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of from the settled land or any other land (*e*), or according to the price of the minerals or substances gotten or any of them (*f*). A dead rent may be

(*a*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 8 (1).
(*b*) *Ibid.* s. 8 (2). (*c*) *Ibid.* s. 8 (3).
(*d*) Settled Land Act, 1889 (52 & 53 Vict. c. 36), s. 2.
(*e*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 9 (1) (i).
(*f*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 8.

made payable with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the dead rent, to make up the deficiency in any subsequent specified period free of rent other than the dead rent (*g*). Unless a contrary intention appears in the settlement, there must be set aside as capital money under the Act part of the rent, viz., where the tenant for life is impeachable for waste in respect of minerals, three-fourths, and otherwise one-fourth; in every such case the residue goes as rents and profits (*h*), and it appears that the tenant must pay to the trustees or into Court such part of the rent as the tenant for life is not entitled to (*i*).

A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased an improvement authorized by the Act for or in connection with mining purposes (*k*).

A lease for a term not exceeding 21 years at the best rent which can reasonably be obtained, and whereby the lessee is not exempted from punishment for waste, may, after the 17th August, 1890, be made by a tenant for life without any notice of an intention to make it having been given to the trustees, and notwithstanding there are no trustees for the purposes of the Act (*l*).

(iii) Mortgages.

Where money is required for enfranchisement or for equality of exchange or partition, the tenant for life may (subject to the general provisions stated below) raise it on mortgage of the settled land or any part of it by conveyance of the fee simple or other estate or interest the subject of the settlement, or by cration of a term of years, or otherwise (*m*). And where money is required for the purpose of discharging an incumbrance (not including an

(*g*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 9 (1) (ii).
(*h*) *Ibid.* s. 11.
(*i*) Settled Land Act Rules, 1882, Appendix, Forms II. (f) and X.
(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 9 (2).
(*l*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 7 (1), (2).
(*m*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 18.

annual sum payable only during a life or lives, or during a term of years absolute or determinable) on the settled land or part of it, the tenant for life may raise the money so required, and also the amount properly required for the payment of the costs of the transaction, on mortgage of the settled land or of any part of it by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years, or otherwise (*n*).

Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged with it or not, in exoneration of the part sold or so given, and by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years, or otherwise make provision accordingly (*o*).

(iv) General Provisions.

The following persons are trustees of a settlement for the purposes of the Settled Land Acts :—

(1) The persons, if any, who are for the time being under a settlement the trustees with power of sale of the settled land, or with power to consent to or approve of the exercise of such power of sale. Failing such persons,

(2) The persons, if any, for the time being who are by the settlement declared to be trustees for the purposes of the Act. Failing such persons,

(3) The persons, if any, who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement, and subject to the same limitations as the land to be sold, or with power to consent to or approve of the exercise of such a power of sale. Failing such persons,

(*n*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 11.
(*o*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 5.

(4) The persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale, of the land to be sold, or with power to consent to or approve of the exercise of such a future power, and whether the power or trust takes effect in all events or not (*p*).

(5) If at any time there are no trustees of a settlement within any of the above definitions, or where it is expedient that new trustees should be appointed, the Court may, on the application of any person interested, appoint trustees for the purposes of the Acts (*q*).

The principal mansion-house (if any) on any settled land, and the pleasure ground and park and the lands (if any) usually occupied with it (*r*), cannot be sold, exchanged or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court (*s*). Where a house is usually occupied as a farm-house, or where the site of any house, and the pleasure grounds and park and lands (if any) usually occupied with it, do not together exceed 25 acres in extent, the house is not, after the 17th August, 1890, to be deemed a principal mansion-house within the meaning of the above provision (*t*).

The Act of 1882 contains provisions enabling the tenant for life, on a sale or grant for building purposes, to dedicate part of the settled land for streets and open spaces, and to construct sewers, and to convey or vest the same to or in the trustees of the settlement or any company or public body (*u*).

The surface and minerals may be dealt with separately with or without way-leaves, powers of working, and other easements (*x*).

(*p*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2 (8); Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 16.
(*q*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 38 (1).
(*r*) *Pease* v. *Courtney* [1904] 2 Ch. 503; 73 L. J. Ch. 760; 91 L. T. 341; 53 W. R. 75; 20 T. L. R. 653.
(*s*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 15; Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10 (2).
(*t*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 10 (3).
(*u*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 16.
(*x*) *Ibid.* s. 17 (1).

Where the settled land comprises an undivided share in land, the tenant for life of such share may join or concur with any other person having power or right of disposition of or over another undivided share (*y*).

The tenant for life of an undivided moiety where the other undivided moiety is out of settlement or settled separately, can sell his moiety under the Act without the concurrence of the person entitled to or having the right of disposition over the other moiety (*z*).

The conveyance or lease of the tenant for life, to the extent and in the manner in which it is expressed to operate under the Act, is effectual to pass the land, or the easements, rights or privileges created, discharged from all the limitations, powers and provisions of the settlement, and from all estates, interests and charges subsisting or to arise under it but subject to all estates, interests and charges having priority to it, and such other, if any, estates, interests and charges as have been conveyed or created for securing money actually raised at the date of the deed, and all leases and grants for value before the date of the deed (*a*).

The powers under the Act of a tenant for life are not capable of assignment or release, and do not pass to an assign, and remain exercisable notwithstanding any purported assignment or release, but the rights of an assignee for value of the estate or interest of the tenant for life cannot be affected without his consent (*b*).

In the case of copyhold or customary land it is sufficient for the deed to be entered on the Court rolls of the manor, and no surrender is required (*c*), but a purchaser may, if he prefers to do so and the tenant on the rolls is willing, take a surrender of the legal customary estate in the usual way.

(*y*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 19.
(*z*) *Cooper* v. *Belsey*, [1899] 1 Ch. 639; 68 L. J. Ch. 258; 80 L. T. 69; 47 W. R. 443.
(*a*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 20 (1), (2).
(*b*) *Ibid.* s. 50.
(*c*) *Ibid.* s. 20 (3).

A tenant for life may make any conveyance or lease necessary or proper for giving effect to a contract entered into by a predecessor in title, and which, if made by the predecessor, would have been valid as against his successors in title (*e*).

Purchase-money and other capital moneys arising under the Act must be paid either to the trustees of the settlement or into Court at the option of the tenant for life (*f*); but it is not to be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee (*g*); and a vendor selling as tenant for life cannot compel the purchaser to pay the purchase-money into Court where there are no trustees for the purposes of the Act, but a purchaser who without notice that there are no such trustees pays his money into Court gets a good title (*h*).

Where there is an incumbrance, the purchaser may, of course, pay the purchase-money or part of it to an incumbrancer by the direction of the trustees, but he is not justified in such a case in ignoring the trustees altogether and paying the purchase-money to an incumbrancer by the direction of the tenant for life only (*i*).

The receipt in writing of the trustees of a settlement, or, where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities paid or transferred, discharges the payer or transferor therefrom and from being bound to see to the application, or being answerable for any loss or misapplication thereof, and in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of the Act, or that no more than is wanted is raised (*k*).

(*e*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 6; Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 12 (i).

(*f*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2 (9), 22 (1).

(*g*) *Ibid.* s. 39.

(*h*) *Re Fisher and Glazebrook's Contract*, [1898] 2 Ch. 660; 67 L. J. Ch. 613; 79 L. T. 268; 47 W. R. 58.

(*i*) *Re Norton and Las Casas' Contract*, [1909] 2 Ch. 59; 78 L. J. Ch. 489.

(*k*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 40.

Notice must be given by the tenant for life to the trustees when intending to make a sale, exchange, partition, lease (with the exception mentioned on page 362), mortgage or charge (*l*); but a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice (*m*). The notice may be in general terms, except as to a mortgage or charge, and may be waived by writing by a trustee (*n*).

Although a person dealing in good faith with the tenant for life need not inquire whether notice has been given, yet he must satisfy himself that there are trustees for the purposes of the Acts (*o*).

Since the 11th October, 1898, a university or college has been able to exercise any of the powers of sale, enfranchisement, partition, and leasing conferred on a tenant for life by the Settled Land Acts, the property belonging to the university or college being for that purpose deemed the subject of a settlement, and the Ministry of Agriculture substituted for the trustees of the settlement and for the Court. The consent of the Ministry of Agriculture is necessary to the exercise of these powers except in the case of a lease not containing an option of purchase (*p*).

Where a tenant for life, or a person having the powers of a tenant for life, under the Settled Land Acts is an infant, or an infant would, if he were of full age, be a tenant for life or have the powers of a tenant for life under the Act, or an infant is, in his own right, seised of or entitled to the possession of land, the powers of a tenant for life under the Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, orders (*q*).

(*l*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 45 (1).
(*m*) *Ibid.* s. 45 (3).
(*n*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 5 (3).
(*o*) See p. 363.
(*p*) Universities and Colleges Estate Act, 1898 (61 & 62 Vict. c. 55), s. 1.
(*q*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 60.

The general provisions of the Acts do not apply to married women, but it is provided that where a married woman, who otherwise would have been a tenant for life, or would have had the powers of a tenant for life, is entitled for her separate use or as a *feme sole*, then she, without her husband, has the powers of a tenant for life under the Act (*r*). Where not so entitled, then she and her husband together have such powers (*s*). A restraint on anticipation does not prevent the exercise of the powers by a married woman (*t*).

Where the tenant for life, or person having the powers of a tenant for life, under the Acts is a lunatic so found by inquisition, the committee of his estate may, in his name and on his behalf under an order of the Court in Lunacy, exercise the powers of a tenant for life under the Acts. The order may be made on the petition of any person interested in the settled land or of the committee of the estate (*u*). The power of sale given by the Acts cannot be exercised in the case of a person lawfully detained as a lunatic though not so found (*x*); but the committee of the estate of such person appointed under section 116 of the Lunacy Act, 1890 (*y*), may, by leave of a judge, exercise the power of leasing vested in the lunatic by the Settled Land Act, 1882 (*z*).

An order of the Court has since the 2nd July, 1884, been necessary to enable the powers conferred by section 63 of the Act of 1882 to be exercised in respect of land subject to a trust for sale, and until such order is made, the trustees are at liberty to exercise the powers given by the settlement. On an order being made, while it remains in force, no person other than the person having leave under it, can execute any trust or power created by the settlement for any purpose for which leave is, by the order, given to exercise a power conferred by the Acts. The order

(*r*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 61 (1), (2).
(*s*) *Ibid.* s. 61 (3).
(*t*) *Ibid.* s. 61 (6).
(*u*) *Ibid.* s. 62.
(*x*) *Re Baggs*, [1894] 2 Ch. 416, n.; 96 L. T. Journ. 198.
(*y*) 53 & 54 Vict. c. 5.
(*z*) 45 & 46 Vict. c. 38, s. 6; *Re Salt*, [1896] 1 Ch. 117; 65 L. J. Ch 152; 73 L. T. 598; 44 W. R. 146.

requires registration as a *lis pendens*, and if not so registered, and, where necessary, re-registered, it does not affect any person dealing with the trustees (*a*).

Where dealings under the powers of the Acts are proposed between the tenant for life and the estate, the trustees of the settlement stand in the place of and represent the tenant for life, and, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the contract (*b*).

Capital money arising under the Settled Land Act while remaining uninvested or unapplied, and securities on which investment of such capital money is made, are for all purposes of disposition, transmission and devolution considered as land (*c*).

Compound Settlements.

As the definition of a settlement in the Settled Land Act, 1882 (*d*), includes any number of instruments, there may be several settlements within the meaning of the Act subsisting at the same time. The simplest and most usual case is where property is settled on a tenant for life for his life with remainder to his eldest son in tail, and the son on coming of age executes a disentailing deed with the consent of the tenant for life, and afterwards the tenant for life and his son join in making a resettlement on the tenant for life for life with remainder to the eldest son for life with divers remainders over. In this case there are three subsisting settlements :—the original settlement, the resettlement, and the compound settlement composed of the three deeds; and the tenant for life might make a title by selling under any of the three. The safest course in all cases, if there are trustees of the compound settlement, is to take a conveyance from the tenant for life thereunder and to pay the money to such trustees, but as trustees for the purposes of the Acts of the compound settlement can only be appointed by the Court or by the concurrence of

(*a*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.
(*b*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 12.
(*c*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 22 (5).
(*d*) *Ibid.* s. 2 (2).

every person who takes any estate interest or power under the compound settlement, it frequently happens that there are no trustees under the compound settlement. A conveyance by the tenant for life under a compound settlement overrides all interests under any of the sub-settlements comprised in it. The next safest course is to take a conveyance from the tenant for life under the original settlement as this will also override all interests under the original settlement or any subsequent settlements, but this method requires for its validity that the original settlement should still be subsisting (*e*).

If the conveyance is taken from the tenant for life under any resettlement, interests under prior settlements will not be overridden, and persons entitled under prior settlements to portions or charges must accordingly concur. The tenant for life under a resettlement can exercise the powers thereby conferred upon him, notwithstanding the insertion of words such as "in restoration of his original life estate" (*f*). Indeed, these words, though they have become common form, do not seem to have much meaning, as all that can really be done is to limit to the tenant for life a life estate in all respects similar to that which he previously had, with similar powers. The original life estate cannot really be "restored."

When, as is frequently the case, the same persons are trustees for the purposes of the Settled Land Acts under both the original settlement and the resettlement, the tenant for life in default of there being trustees under the compound settlement should be expressed to convey as tenant for life under the original settlement and to confirm as tenant for life under the resettlement.

The Settled Estates Act.

The object of the Setled Estates Act was to facilitate the leasing and sale of settled estates; but with the exception

(*e*) *Lord Wimborne and Browne's Contract*, [1904] 1 Ch. 537; 73 L. J. Ch. 270; 90 L. T. 540; 52 W. R. 334; *Re Trafford's Settled Estates*, [1915] 1 Ch. 9; 84 L. J. Ch. 351; 112 L. T. 107.

(*f*) *Re Mundy and Roper's Contract*, [1899] 1 Ch. 275; 78 L. T. 547.

of certain leases which the tenant for life, if not restrained by the settlement, can make (*g*), leases and sales under the Act can only be made by the consent of the Court.

(i) Sales.

The Court may authorize sales of the settled estates and timber, other than ornamental timber (*h*); and direct who shall execute the conveyance (*i*); and on any sale earth, coal, stone and minerals may be excepted (*k*).

(ii) Leases.

Leases for twenty-one years of land, except the principal mansion-houses and demesnes, may, unless the settlement prohibits, be made without any order of the Court (*l*) by a tenant for any life or for years determinable with any life or lives, or for any greater estate either in his own right or right of his wife; and also by any tenant by the curtesy or in dower or in right of a wife who is seised in fee; but the above provisions only apply to settlements made after the 1st November, 1856 (*m*). Such leases must take effect at or within one year from the making, and must be by deed at the best rent which can be reasonably obtained, and they must be without fine and without impeachment of waste, and must contain a covenant for payment of rent, and a condition for re-entry on non-payment for twenty-eight days or a lesser period, and a counterpart must be executed by the lessee (*n*).

Leases which may be authorized by the Court under the Act must take effect in possession at or within a year from the making, and must not exceed for an agricultural or occupation lease twenty-one years, for a mining lease forty years, for a repairing lease sixty years, and for a building lease ninety-nine years. The best rent obtainable must be

(*g*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 46.
(*h*) *Ibid.* s. 16.
(*i*) *Ibid.* s. 22.
(*k*) *Ibid.* s. 19.
(*l*) *Ibid.* s. 46.
(*m*) *Ibid.* s. 57.
(*n*) *Ibid.* s. 46.

reserved, and it must be payable half-yearly or more frequently, and no fine must be taken. The lease must be by deed and contain a condition for re-entry on non-payment of rent for twenty-eight days, and the lessee must execute a counterpart, and, in case of a mining lease, the portion of the rent specified in the Act must be set aside as capital (*o*). The Court may either direct who shall execute the lease as lessor or may vest general powers of leasing in the trustees (*p*).

(iii) General Provisions.

The Act specifies who may petition the Court to exercise its powers (*q*). Applications to the Court are to be made with the consent and concurrence of certain persons (*r*), which can in certain cases be dispensed with (*s*). An order is not, as against a purchaser, invalidated by want of jurisdiction or concurrence, consent, notice or service, whether the purchaser has notice of any such want or not (*t*). The Court may not, however, exercise any of the powers conferred by the Act if an express declaration negativing such powers is contained in the settlement (*u*).

All money received on any sale effected under the Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone or minerals, may, if the Court think fit, be paid to any trustees of whom it shall approve, otherwise the same must be paid into Court, and such money is by the Act to be applied, as the Court from time to time directs, to some one or more of the purposes specified in the Act (*x*).

Where real estate is devised to trustees upon trust to sell at their discretion, and invest the proceeds and pay the income to one or more persons successively for life, with remainder over, such estate is a settled estate within the

(*o*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), ss. 4, 12.
(*p*) *Ibid.* s. 13.
(*q*) *Ibid.* s. 23.
(*r*) *Ibid.* s. 24.
(*s*) *Ibid.* ss. 25—29.
(*t*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70 (1).
(*u*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 38.
(*x*) *Ibid.* s. 34.

meaning of the Act (*y*); and on or after the 1st January, 1882, where a person entitled to land in fee or for any leasehold interest at a rent is an infant, the land is deemed a settled estate within the Act (*z*).

The Act contains provisions with regard to application being made and consents given on behalf of persons under disability, and amongst other things provides that if a married woman applies to the Court or consents to an application, she must be separately examined, even if her property, the subject of the application, be settled in trust for her separate use, and no clause against anticipation is to prevent the Court from exercising its power (*a*).

See SETTLEMENTS—TRUSTEES, SALES AND MORTGAGES BY.

Requisitions.

1. *A. B. and C. D., the trustees of the will of X., deceased, have no power of sale, and are not, therefore, trustees within the meaning of the Settled Land Acts, 1882 to 1890; trustees for the purposes of the Acts must, therefore, be appointed.*

2. *Has the consent of C. D., who is entitled to the mortgage having priority to the settlement, been obtained to the sale?*

3. *The house and premises contracted to be sold appear to be the principal mansion-house and grounds as defined by the Settled Land Act, 1890, s. 10; the consent of the trustees of the settlement or an order of the Court must, therefore, be obtained and produced.*

4. *It is presumed that no order has been obtained under the Settled Land Act, 1884, s. 7, giving the tenant for life leave to exercise the powers given by section 63 of the Settled Land Act, 1882.*

5. *Has any money been raised by any assignment of the term of 500 years created by the testator's will.*

(*y*) *Re Laing's Trusts*, L. R. 1 Eq. 416; 35 L. J. Ch. 282; 14 L. T. 56; 14 W. R. 328; 12 Jur. (N. S.) 119.

(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 41.

(*a*) Settled Estates Act, 1877 (40 & 41 Vict. c. 18), s. 50; *Re Horn's Settled Estates*, 29 L. T. 830.

6. *Has the tenant for life mortgaged or dealt with his life interest in any way? If he has, the concurrence of the mortgagees must be obtained.*

7. *The vendor could only make a title as tenant for life of the Resettlement of* 19 , *if all the persons entitled to jointures or portions under the various earlier settlements were* sui juris *and concurred. Under the circumstances the only course appears to be to have trustees appointed by the Court of the compound settlement consisting of the following instruments:—*

SETTLEMENTS.

Alienations of lands, goods, or chattels made with intent to delay, hinder, or defraud creditors are voidable, except against *bonâ fide* purchasers for valuable consideration (*b*) having no notice (*c*). The exception in favour of such purchasers includes a purchaser of any interest under the deed impeached, whether that interest be legal or equitable, and prevents the deed being void against him (*d*). A settlement in consideration of marriage may come within the statute if the marriage was merely part of a scheme to defraud and delay creditors and protect the settlor's property from their claims (*e*); as also may any other alienations for valuable consideration if good faith on the part of the alienee is wanting (*f*).

The effect of another statute of Elizabeth (*g*) was, until the 29th June, 1893, that all voluntary settlements of lands, whether freehold, leasehold, or copyhold, were held to be void as against subsequent *bonâ fide* purchasers for value, even with notice, on the principle that the vendor, by afterwards selling for a valuable consideration, must be

(*b*) *Twyne's Case*, 3 Rep. 80 b.
(*c*) 13 Eliz. c. 5.
(*d*) *Halifax Joint Stock Banking Co.* v. *Gledhill*, [1891] 1 Ch. 31; 60 L. J. Ch. 181; 63 L. T. 623; 39 W. R. 104.
(*e*) *Columbine* v. *Penhall*, 1 W. R. 272; 1 Sm. & G. 228; *Bulmer* v. *Hunter*, L. R. 8 Eq. 46; 38 L. J. Ch. 543; 20 L. T. 942.
(*f*) *Twyne's Case* (and notes thereunder), 3 Rep. 80 b; 1 Sm. L. C. 1.
(*g*) 27 Eliz. c. 4.

taken to have made the voluntary conveyance in order to defeat the conveyance to purchaser; but on or after the 29th June, 1893, no voluntary conveyance of any lands, tenements, or hereditaments made *bonâ fide* and without any fraudulent intent is deemed fraudulent within the meaning of that Act by reason of any subsequent purchase for value, or can be defeated under any of the provisions of that Act by a conveyance made upon any such purchase for value (*h*); but this does not apply in any case in which a voluntary settlor has subsequently, but before the 29th June, 1893, disposed of or dealt with the lands in question to or in favour of a purchaser for value (*i*).

A fraudulent conveyance or gift of any part of the property of a debtor is an act of bankruptcy (*k*). This extends the provisions of the statute of Elizabeth, inasmuch as under the latter statute the Court has to consider whether the person who takes the property has any knowledge of the fraud, and whether what is transferred is substantially the whole of the transferor's property, while under the Bankruptcy Act such considerations are immaterial (*l*).

A conveyance or assignment of the property of a debtor to a trustee for the benefit of his creditors generally is also an act of bankruptcy (*m*), and as the title of the trustee in bankruptcy relates back to the first act of bankruptcy committed by the bankrupt within three months preceding the presentation of the bankruptcy petition (*n*), such a conveyance is void if a bankruptcy ensues within such period (*o*).

Every conveyance or transfer by a person unable to pay his debts as they become due in favour of any creditor, with a view of giving such creditor a preference, if the

(*h*) Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), s. 2.

(*i*) *Ibid.* s. 3.

(*k*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1) (b); Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 1 (1) (b).

(*l*) *Re Carl Hirth, Ex parte The Trustee*, [1899] 1 Q. B. 612, at p. 621; 68 L. J. Q. B. 287; 80 L. T. 63; 47 W. R. 243.

(*m*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4 (1); *Ex parte Villars, Re Rogers*, L. R. 9 Ch. 432, at p. 443; 43 L. J. Bk. 76; 30 L. T. 348; 22 W. R. 397; Bankruptcy Act, 1914, s. 1 (1) (a).

(*n*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 43; Bankruptcy Act, 1914, s. 37.

(*o*) See under Act of 1869, *Ex parte Villars, Re Rogers*, L. R. 9 Ch. 432, at p. 443; 43 L. J. Bk. 76; 30 L. T. 348; 22 W. R. 397.

person making the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date thereof, is deemed fraudulent and void as against the trustee in the bankruptcy (*p*); but this does not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt (*q*); and if the real object of the conveyance or settlement is to protect the settlor and not to give a preference, the section does not apply; therefore, where a trustee who had committed breaches of trust and was insolvent on the eve of bankruptcy conveyed an estate to make good the breaches of trust without any pressure or request by his *cestuis que trust*, it was held not to be a fraudulent preference (*r*).

Any settlement of property, not being a settlement made before or in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith (*i.e.*, on the part of the purchaser (*s*)) and for valuable consideration, or one made on the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, is, if the settlor becomes bankrupt within two years after the date of the settlement, void against the trustee in the bankruptcy, and if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, is void against such trustee, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on its execution (*t*). It has been held that the expression "void" in the section of the Bankruptcy Act containing this provi-

(*p*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 48 (1); Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 44 (1).

(*q*) Bankruptcy Act, 1883, s. 48 (2); Bankruptcy Act, 1914, s. 44 (2).

(*r*) *Sharp* v. *Jackson*, [1899] A. C. 419; 68 L. J. Q. B. 866; 80 L. T. 841; 6 Manson, 264.

(*s*) *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505; 64 L. J. Ch. 274; 72 L. T. 251; 43 W. R. 247; 13 R. 254.

(*t*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47 (1); Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 42 (1).

sion may be construed as "voidable," and that a voluntary settlement is not void against the settlor's trustee in bankruptcy from its date, but only from the time the trustee's title accrued, so that if before that time the property comprised in the settlement has been sold *bonâ fide* to a purchaser for value, the title of the purchaser will be good as against the trustee (*u*).

An ante-nuptial agreement made in consideration of marriage is not sufficient to support a post-nuptial settlement unless the agreement or a memorandum or note of it is signed before the marriage, pursuant to section 4 of the Statute of Frauds. The mere recital, though it may bind the settlor and volunteers claiming under him, does not bind creditors (*x*).

Covenants to settle after-acquired property are of common occurrence in marriage settlements: In the absence of expressions showing a contrary intention, such covenants are construed as applying only to property acquired during the coverture, even though the words "during the said intended coverture" are omitted (*y*). A covenant of this description attaches to property which is settled to the separate use of a married woman, unless it be subject to a restraint against alienation (*z*), and to a reversionary interest to which the covenantor becomes entitled during the coverture, but which does not fall into possession until after the determination (*a*); but it does not attach to property over which the covenantor has a general power of appointment (*b*). All covenants made in consideration of marriage in favour of the settlor's wife

(*u*) *Re Brall, Ex parte Norton*, [1893] 2 Q. B. 381; 62 L. J. Q. B. 457; 69 L. T. 323; 41 W. R. 623; 5 R. 440; 10 Morrell, 166; *Re Carter and Kenderdine's Contract*, [1897] 1 Ch. 776; 66 L. J. Ch. 408; 76 L. T. 476; 45 W. R. 484.

(*x*) *Re Holland, Gregg* v. *Holland*, [1901] 2 Ch. 145; 70 L. J. Ch. 625; 85 L. T. 304; 49 W. R. 476; 8 Manson, 266.

(*y*) *Re Edwards*, L. R. 9 Ch. 97; 43 L. J. Ch. 265; 29 L. T. 712; 22 W. R. 144; *Re Campbell's Policies*, 6 Ch. D. 686; 46 L. J. Ch. 142; 25 W. R. 268.

(*z*) *Brooks* v. *Keith*, 4 L. T. 541; 9 W. R. 565; 7 Jur. (N. S.) 482; 1 Dr. & Sm. 462.

(*a*) *Butcher* v. *Butcher*, 14 Beav. 222.

(*b*) *Bower* v. *Smith*, L. R. 11 Eq. 279; 40 L. J. Ch. 194; 24 L. T. 118; 19 W. R. 399.

or children to settle any property in which he had not, at the date of his marriage, any estate or interest, vested or contingent, in possession or remainder, and not being property in right of his wife, are void against the trustee in bankruptcy, unless the property has been actually transferred pursuant to the covenant (*c*).

An infant being a male of not less than twenty years, or a female of not less than seventeen years, can, with the sanction of the Court, on his or her marriage make a valid settlement of real or personal estate (*d*).

The settlement of an infant made without such sanction is voidable and not void. If repudiated, such repudiation must take place within a reasonable time of the infant coming of age (*e*).

Notwithstanding section 19 of the Married Women's Property Act, 1882, a settlement or agreement for a settlement made on or after the 1st of January, 1908, by a husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married, is not valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age. But if she dies an infant any covenant or disposition by the husband contained in the settlement or agreement binds any interest in any property of hers to which he becomes entitled on her death and which he could otherwise have bound or disposed of. Nothing in this enactment renders invalid any settlement made under the Infant Settlements Act, 1855 (*f*), previously mentioned (*g*).

See COVENANTS—INFANTS—SETTLED LAND.

Requisitions.

1. *The consideration for the sale by A. B. to X. Y. is not stated in the deed of* , 19 . *Inasmuch as*

(*c*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47 (2); Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 42 (2).
(*d*) Infant Settlements Act, 1855 (18 & 19 Vict. c. 43).
(*e*) *Edwards* v. *Carter*, [1893] A. C. 360; 63 L. J. Ch. 100; 69 L. T. 153; 1 R. 218; 58 J. P. 4.
(*f*) 18 & 19 Vict. c. 43.
(*g*) Married Women's Property Act, 1907 (7 Edw. 7, c. 18).

the title of A. B. was under a voluntary deed and he afterwards became bankrupt, the vendor must, at his own expense, prove that the sale to X. Y. was a bonâ fide *sale for valuable consideration, otherwise the title is not good against A. B.'s trustee in bankruptcy.*

2. The conveyance by C. D. of , 18 , being a voluntary one made prior to the Voluntary Conveyances Act, 1893, *the vendor must, at his own expense, supply evidence to show that C. D. did not subsequently convey the premises to a purchaser for value.*

SEWERS.

See LAND IMPROVEMENT ACTS—STREET IMPROVEMENTS.

SPES SUCCESSIONIS.

A mere *spes successionis* is not a title to property in English law, or within the statutes making alienable by deed future interests in hereditaments (*h*). No one can have any estate or interest at law or in equity, contingent or otherwise, in the property of a living person to whom he hopes to succeed as heir-at-law or next of kin (*i*).

In equity, however, a *spes successionis* might always be assigned, and such an assignment, if for valuable consideration, will be enforced. For instance, contracts made in consideration of marriage to convey future-acquired property upon the trusts of the marriage settlement are of common occurrence, and have long been held enforceable.

The question whether a possibility of reverter of a fee simple estate is itself an estate is the subject of contradictory decisions, but it is clear that such a possibility is devisable by force of the Wills Act, 1837 (*k*).

(*h*) 7 & 8 Vict. c. 76, s. 5; Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6.

(*i*) *Re Parsons, Stockley* v. *Parsons*, 45 Ch. D. 51; 59 L. J. Ch. 666; 62 L. T. 929; 38 W. R. 712.

(*k*) 7 Will. 4 & 1 Vict. c. 26; s. 3; *Pemberton* v. *Barnes*, [1899] 1 Ch. 544; 68 L. J. Ch. 192; 80 L. T. 181; 47 W. R. 444.

With regard to the *spes successionis* of an expectant tenant in tail, the Fines and Recoveries Act, 1833, provides that nothing in the Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein, and further, excludes Courts of Equity from giving effect to dispositions which in Courts of Law would not be effectual (*l*). An expectancy of this description cannot therefore be disposed of at law; but, inasmuch as it has been held by the Court of Appeal that the Act does not interfere with the jurisdiction of the Court to decree against a tenant in tail specific performance of a contract for disentailment entered into by him, but only prevents the Court from treating the contract as being in equity a disposition taking effect under the Act so as to bind the issue in tail and remaindermen (*m*), it is apprehended that a contract for value to dispose of a *spes successionis* as tenant in tail would, on the estate falling into possession in the lifetime of the expectant tenant in tail, be enforced in equity against him.

Requisition.

A statutory declaration must be made by the vendor proving that he is [*sole next of kin of A. B., who is incurably insane*], *also specifying the property of A. B., and stating that he has not already dealt with his* spes successionis, *and that he has not committed any act of bankruptcy.*

STAMPS.

It should be seen that every document material to the title is properly stamped. If any such document is not stamped, or is insufficiently stamped, the purchaser is entitled to have it stamped at the vendor's expense, the vendor paying any penalty which may have been incurred.

(*l*) The Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 20, 47.

(*m*) *Bankes* v. *Small*, 36 Ch. D. 716; 56 L. J. Ch. 832; 57 L. T. 292; 35 W. R. 765.

It was formerly common form in conditions of sale to provide that no objection or requisition should be made upon the ground of the absence or insufficiency of any stamp; but now, with regard to instruments executed on or after the 16th May, 1888, every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of any stamp upon any such instrument, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of any stamp upon any such instrument, or indemnifying against such liability, absence, or insufficiency, is void (*n*); but such a condition, if limited to instruments executed before the 16th May, 1888, is good and binding on a purchaser.

A contract containing such a condition should be stamped by cancelling a sixpenny stamp, as the Inland Revenue Authorities sometimes make difficulties about impressing a sixpenny stamp on such a contract.

It is not proposed to consider the statutes by which the stamp duties on deeds and other documents were regulated prior to the 1st January, 1871. A list of these enactments will be found in the schedule to the Inland Revenue Repeal Act, 1870 (*o*), which repeals them all as from the 1st January, 1871.

In cases of a purchase of copyhold or customary estate conveyed by deed, no surrender being necessary, the document to be stamped *ad valorem* is the deed. In other cases of a purchase of copyhold or customary estate the document to be stamped *ad valorem* is the surrender or grant if made out of Court, or the memorandum thereof, and the copy of the Court roll of the surrender or grant if made in Court (*p*).

The covenant to surrender merely bears a 10*s*. stamp, but if the consideration does not exceed 75*l*. the *ad valorem*

(*n*) The Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 20; The Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 117.
(*o*) 33 & 34 Vict. c. 99.
(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 58 (3), 61 (1).

duty may be less than 10*s*., and in that case both documents should be stamped *ad valorem*.

The Stamp Act gives directions as to the duty in certain cases such as subsales (*q*).

The Finance (1909-10) Act, 1910 (*r*), as amended by the Finance Act, 1920 (*s*), provides that on a transfer on sale of any interest in land or on the grant of any lease exceeding 14 years, the deed is not to be deemed duly stamped unless stamped with a stamp denoting that the particulars have been delivered, which were originally required to be delivered by the Finance (1909-10) Act, 1910 (*r*), for the purpose of increment value duty. This duty has now been abolished by the Finance Act, 1920 (*s*), as from the 4th August, 1920, and increment value duty not paid at that time is not to be collected.

The duties on the various instruments dated after the 31st December, 1870, which usually occur in investigation of title are—

Agreement for lease or letting—	*s.*	*d.*
(1) For any term not exceeding 35 years—same duty as a lease for the same period and for the same consideration (*t*).		
(2) For 35 years or more	0	6
(3) For an indefinite term—		
(i) If executed before the 1st January, 1892	0	6
(ii) If executed on or after the 1st January, 1892—same duty as on a lease for an indefinite term for the same consideration (*u*).		

Agreement for sale—

(1) Of an equitable interest in any property whatsoever :

(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 58.
(*r*) 10 Edw. 7, c. 8.
(*s*) 10 & 11 Geo. 5, c. 18, s. 57.
(*t*) 33 & 34 Vict. c. 97, s. 96; 54 & 55 Vict. c. 39, s. 75.
(*u*) 54 & 55 Vict. c. 39, s. 75.

	s.	d.
(2) Of any interest in any property, except lands, goods or stock, or marketable securities, or ships, or shares therein, on or after the 31st May, 1889—same duty as on a conveyance for the same consideration (*x*).		
Agreement under hand only not otherwise specifically charged with duty, the subject-matter whereof is not less than 5*l.*	0	6
[*For exemptions, see Schedule I. to Stamp Act*, 1891 (54 & 55 *Vict. c.* 39).]		
Agreement under seal not otherwise specifically charged with duty	10	0
Appointment in execution of power	10	0
Appointment of new trustee	10	0
Conveyance or transfer on sale (other than the conveyance of an equity of redemption or a transfer of mortgage, *which see*).		
(1) If made before the 29th April, 1910, or whenever made, if not over 500*l.* and containing a certificate that the transaction does not form part of a larger transaction, exceeding 500*l.*, in amount or value.		
Where the consideration does not consist of money payable periodically, and its amount or value does not exceed 5*l.*	0	6
Exceeds 5*l.*, but does not exceed 10*l.* ...	1	0
,, 10*l.* ,, ,, 15*l.* ...	1	6
,, 15*l.* ,, ,, 20*l.* ...	2	0
,, 20*l.* ,, ,, 25*l.* ...	2	6
,, 25*l.* ,, ,, 300*l.*		
For every 25*l.* and for every fractional part of 25*l.* of such amount or value	2	6

(*x*) Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), s. 18; Revenue Act, 1889 (52 & 53 Vict. c. 42), s. 15; Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59.

	s.	d.
And when the consideration exceeds 300*l.*, for every 50*l.* and for every fractional part of 50*l.* of such amount or value	5	0
(2) If made on or after the 29th April, 1910 (*x*), if over 500*l.*, or if not containing a certificate that the transaction does not form part of a larger transaction exceeding 500*l.* in amount or value.		
Where the consideration does not consist of money payable periodically, and its amount or value does not exceed 5*l.*	1	0
Exceeds 5*l.*, but does not exceed 10*l.* ...	2	0
,, 10*l.* ,, ,, 15*l.* ...	3	0
,, 15*l.* ,, ,, 20*l.* ...	4	0
,, 20*l.* ,, ,, 25*l.* ...	5	0
,, 25*l.* ,, ,, 300*l.*		
For every 25*l.* and for every fractional part of 25*l.* of such amount or value	5	0
And when the consideration exceeds 300*l.*, for every 50*l.* and for every fractional part of 50*l.* of such amount or value	10	0
(3) Where the consideration consists of money payable periodically—		
(i) For a definite period not exceeding 20 years—chargeable with duty on the total amount to be paid (*y*).		
(ii) For a definite period exceeding 20 years—chargeable with duty on the total amount to be paid if executed before the 1st January, 1892 (*z*), and with duty on the amount payable during first 20 years if executed on or after that date (*a*).		
(iii) If payable in perpetuity or for any indefinite period not terminable with life—chargeable with duty on the amount payable during first 20 years (*b*).		

(*x*) 10 Edw. 73, c. 8, s. 73.
(*y*) 33 & 34 Vict. c. 97, s. 72; 54 & 55 Vict. c. 39, s. 56.
(*z*) Stamp Act, 1870 (33 & 34 Vict. c. 97), s. 72.
(*a*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 56.
(*b*) 33 & 34 Vict. c. 97, s. 72; 54 & 55 Vict. c. 39, s. 56.

	s.	d.
(iv) If payable for life or lives chargeable with duty on the amount payable during the first 12 years (*c*).		
Conveyance of equity of redemption on sale—chargeable with *ad valorem* duty as a conveyance on the sum total of the amount paid for the equity of redemption and the amounts due to several mortgagees.		
Conveyance otherwise than for value if made before the 29th April, 1910	10	0
Conveyance otherwise than for value if made on or after the 29th April, 1910—same duty as a conveyance for a consideration equal to the value of the property conveyed or transferred (*d*).		
Copy, attested, of instrument chargeable with duty (or amount of duty, if less than 1*s*.)	1	0
Copy, attested, of will, probate, or letters of administration, public register (other than births, baptisms, marriages, deaths or burials), books or records of any Court	1	0
Copy, attested, of certificate of birth, baptism, marriage, death, or burial	1	0
Deed not otherwise charged with duty	10	0
Exchange—		
(1) Where the amount paid for equality of exchange does not exceed 100*l*.	10	0
(2) Where the amount paid for equality of exchange exceeds 100*l*.—same *ad valorem* duty as a conveyance on sale for the consideration.		
Duplicate or counterpart	5	0
Foreclosure Order, same duty as conveyance on sale (*e*).		

(*c*) 33 & 34 Vict. c. 97, s. 72; 54 & 55 Vict. c. 39, s. 56.
(*d*) 10 Edw. 7, c. 8, s. 74.
(*e*) *Re Lovell and Collard's Contract*, [1907] 1 Ch. 249.

Lease—	s.	d.
(1) For a term of one year of any dwelling-house or part thereof at a rent not exceeding 10*l.* per annum made after the 31st December, 1891	0	1
(2) For any definite term less than one year—		
(i) Of any dwelling-house or part thereof at a rent not exceeding the rate of 10*l.* per annum	0	1
(ii) Of any furnished dwelling-house when the rent for such term exceeds 25*l.*		
If made before the 29th April, 1910	2	6
If made on or after the 29th April, 1910	5	0
(iii) Of lands except as aforesaid—same duty as a lease for a year at the rent reserved for the definite term.		
(3) For any other definite term, or for any indefinite term, of any lands where the consideration or any part thereof consists of any money, stock, or security in respect of such consideration :—		
If made before the 31st March, 1911, or whenever made, if over 500*l.*, or if not containing a certificate that the transaction does not form part of a larger transaction exceeding 500*l.* in amount or value, or if the rent exceeds 20*l.*—same duty as a conveyance on a sale for the same consideration would be liable to if not containing a similar certificate.		
If made on or after the 31st March, 1911, and if not over 500*l.* and containing a certificate that the transaction does not form part of a larger transaction exceeding 500*l.* in amount or value and if the rent does not exceed 20*l.*—same duty as a conveyance on sale for the same consideration would be liable to if containing a similar certificate (*e*).		

(*e*) The Revenue Act, 1911 (1 Geo. 5, c. 2), s. 15.

Where the consideration or any part of the consideration is any rent, in respect of such consideration :—

If made before 29th April, 1910.	If the term does not exceed 35 years or is indefinite.	If the term exceeds 35 years, but does not exceed 100 years.	If the term exceeds 100 years.
	£ s. d.	£ s. d.	£ s. d.
Not exceeding 5*l.* per annum	0 0 6	0 3 0	0 6 0
Exceeding 5*l.* and not exceeding 10*l.* per annum	0 1 0	0 6 0	0 12 0
„ 10*l.* „ „ 15*l.* „	0 1 6	0 9 0	0 18 0
„ 15*l.* „ „ 20*l.* „	0 2 0	0 12 0	1 4 0
„ 20*l.* „ „ 25*l.* „	0 2 6	0 15 0	1 10 0
„ 25*l.* „ „ 50*l.* „	0 5 0	1 10 0	3 0 0
„ 50*l.* „ „ 75*l.* „	0 7 6	2 5 0	4 10 0
„ 75*l.* „ „ 100*l.* „	0 10 0	3 0 0	6 0 0
„ 100*l.*			
For every full sum of 50*l.* and also for any fractional part of 50*l.* thereof	0 5 0	1 10 0	3 0 0

If made on or after 29th April, 1910. (*f*)	If the term does not exceed 35 years or is indefinite.	If the term exceeds 35 years, but does not exceed 100 years.	If the term exceeds 100 years.
	£ s. d.	£ s. d.	£ s. d.
Not exceeding 5*l.* per annum	0 1 0	0 6 0	0 12 0
Exceeding 5*l.* and not exceeding 10*l.* per annum	0 2 0	0 12 0	1 4 0
„ 10*l.* „ „ 15*l.* „	0 3 0	0 18 0	1 16 0
„ 15*l.* „ „ 20*l.* „	0 4 0	1 4 0	2 8 0
„ 20*l.* „ „ 25*l.* „	0 5 0	1 10 0	3 0 0
„ 25*l.* „ „ 50*l.* „	0 10 0	3 0 0	6 0 0
„ 50*l.* „ „ 75*l.* „	0 15 0	4 10 0	9 0 0
„ 75*l.* „ „ 100*l.* „	1 0 0	6 0 0	12 0 0
„ 100*l.* per annum.			
For every full sum of 50*l.* and also for any fractional part of 50*l.* per annum	0 10 0	3 0 0	6 0 0

(4) Of any other kind whatsoever.

If made before the 29th April, 1910 ... ... 10 0

If made on or after the 29th April, 1910 (*f*) 1 0 0

Counterpart or duplicate of lease—

(1) When the duty on lease does not exceed 5*s.* —same duty as the original lease

(2) In any other case 5 0

Memorial to be registered pursuant to any Act for the time being in force relating to the public registering of deeds—

(*f*) 10 Edw. 7, c. 8, s. 75.

	s.	d.
(1) Where the instrument registered is chargeable with any duty not amounting to 2*s.* 6*d.*—same duty as the registered instrument.		
(2) In any other case	2	6

Mortgage, bond, debenture, or covenant [including an agreement under seal to execute a mortgage (*d*)]—

(1) Being the only, or principal, or primary security [other than an equitable mortgage effected by an agreement or memorandum under hand only, executed on or after the 16th May, 1888].

For money not exceeding 10*l.*		
If made before the 25th August, 1883 ...	0	8
If made on or after the 25th August, 1883 (*e*)	0	3
For money exceeding 10*l.* and not exceeding 25*l.*	0	8
Exceeding 25*l.* and not exceeding 50*l.* ...	1	3
,, 50*l.* ,, ,, 100*l.* ...	2	6
,, 100*l.* ,, ,, 150*l.* ...	3	9
,, 150*l.* ,, ,, 200*l.* ...	5	0
,, 200*l.* ,, ,, 250*l.* ...	6	3
,, 250*l.* ,, ,, 300*l.* ...	7	6
,, 300*l.*, for every 100*l.*	2	6
And also for every fractional part of 100*l.*	2	6

(2) Being a collateral, or auxiliary, or additional, or substituted security [other than an equitable mortgage effected by an agreement or memorandum under hand only, executed on or after 16th May, 1888], or by way of further assurance where the primary security is duly stamped—

For every 100*l.*, and also for every fractional part of 100*l.* of the amount secured ...	0	6

(*d*) *United Realization Co.* v. *Inland Revenue Commissioners*, [1899] 1 Q. B. 361; 68 L. J. Q. B. 218; 79 L. T. 556; 47 W. R. 381.
(*e*) 46 & 47 Vict. c. 55, s. 15.

	s.	d.
Limited to a maximum of 10*s.* after 31st August, 1903 (*f*).		
(3) Being an equitable mortgage of any property [other than stock or marketable security] effected by an agreement or memorandum under hand only, executed on or after the 16th May, 1888 (*g*).		
For every 100*l.* and any fractional part of 100*l.* of amount secured	1	0
(4) Being effected by instrument under hand only, executed on or after the 16th May, 1888, given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign or colonial share certificate, or any security for money transferable by delivery by way of security for any loan (*h*)	0	6

Order for foreclosure.—Same duty as on a conveyance on sale for amount of mortgage money or for value of property, whichever is less (*i*).

Order, vesting, on sale.—Same duty as on conveyance on sale (*k*).

Order, vesting, otherwise than on sale or mortgage.—Same duty as on conveyance or transfer of property (*l*).

Partition—

(1) Where the amount paid for equality of partition does not exceed 100*l.*	10	0
(2) Where the amount paid for equality of partition exceeds 100l.—same *ad valorem* duty as a conveyance on sale for the consideration.		
Duplicate or counterpart	5	0

(*f*) 3 Edw. 7, c. 46, s. 7.
(*g*) The Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 15; 54 & 55 Vict. c. 39, s. 86.
(*h*) 51 & 52 Vict. c. 8, s. 14; 54 & 55 Vict. c. 39, s. 23.
(*i*) 33 & 34 Vict. c. 97, ss. 70, 73; 54 & 55 Vict. c. 39, ss. 54, 57; 61 & 62 Vict. c. 10, s. 6.
(*k*) 33 & 34 Vict. c. 97, s. 70; 54 & 55 Vict. c. 39, s. 54.
(*l*) 33 & 34 Vict. c. 97, s. 78; 54 & 55 Vict. c. 39, s. 62.

	s.	d.
Policy of fire insurance—		
Before the 1st September, 1920	0	1
On or after the 1st September, 1920 (*k*)	0	6
Policy of life insurance (*m*)—		
Where the sum insured does not exceed 10*l.* ...	0	1
Exceeds 10*l.* but does not exceed 25*l.*	0	3
Exceeds 25*l.* but does not exceed 500*l.*—		
For every full sum of 50*l.*, and also for any fractional part of 50*l.* of the amount insured	0	6
Exceeds 500*l.* but does not exceed 1,000*l.*, for every full sum of 100*l.* and also for any fractional part of 100*l.* of the amount insured ...	1	0
Exceeds 1,000*l.*, for every full sum of 1,000*l.* and also for every fractional part of 1,000*l.* of the amount insured	10	0
Receipt for money amounting to 2*l.* or upwards—		
Before the 1st September, 1920	0	1
On or after the 1st September, 1920 (*l*)	0	2
This does not apply to a receipt written upon or contained in any instrument liable to stamp duty, and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured or therein mentioned.		
[*For the other exceptions, see Schedule I. of the Stamp Act*, 1891, *as amended by the Finance Act*, 1895 (*n*).]		
Reconveyance of any mortgage security—		
For every 100*l.* and also for every fractional part 100*l.* of the total amount or value of the money at any time secured	0	6
Release or Renunciation of any property otherwise than upon a sale or mortgage	10	0

(*k*) 10 & 11 Geo. 5, c. 18, s. 34. (*l*) *Ibid.* s. 40.
(*m*) Defined in the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 98.
(*n*) 58 & 59 Vict. c. 16, s. 9.

	s.	d.
Retirement of trustee (*o*)	10	0
Settlement.—Any instrument, whether voluntary or upon good or valuable consideration, other than a *bonâ fide* pecuniary consideration whereby any definite and certain principal sum of money, or any definite and certain amount of stock or any security is settled or agreed to be settled in any manner whatsoever. For every 100*l.* and also for any fractional part of 100*l.* of the amount or value of the property settled or agreed to be settled	5	0
Exemption.—Instrument of appointment relating to any property in favour of persons specially named or described as the object of the power of appointment where duty has been duly paid in respect of the same property upon the settlement creating the power or the grant of representation of any will or testamentary instrument creating the power.		
On and after 29th April, 1910, a voluntary settlement *inter vivos* is chargeable with duty as a Conveyance (*p*).		
Statutory declaration	2	6
Transfer of any mortgage, bond, debenture, or covenant, or of any money or stock secured by any such instrument—		
For every 100*l.*, and also for any fractional part of 100*l.* of the amount transferred, exclusive of the interest which is not in arrear ...	0	6

Note.—A transfer made for effectuating the appointment of a new trustee is not chargeable with any higher duty than 10*s.* (*q*). 10*s.* stamp on a transfer of mortgage, whether adjudicated or not, does not give notice of a

(*o*) 2 Edw. 7, c. 7, s. 9.
(*p*) 10 Edw. 7, c. 8, s. 74 (4).
(*q*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 62.

trust (*q*). But if, as is usually the case, it is required to keep the trust off the title, the stamp on the transfer should be adjudicated, as it might otherwise become necessary to disclose the trust in order to show that the instrument was sufficiently stamped.

See DEATH DUTIES.

Requisitions.

1. *The voluntary conveyance of* , 1908, *appears not to have been stamped. It must be stamped with a* 10*s. stamp before completion, and any penalty that may be enforced must be paid by the vendor.*

2. *The voluntary conveyance of* , 19 , *is insufficiently stamped with a* 10*s. stamp. It must be stamped* ad valorem. *Adjudication will be necessary.*

3. *Notwithstanding the condition of sale precluding objections or requisitions upon the ground of the absence or insufficiency of any stamp, the purchaser must have the settlement of* 1889 *properly stamped before completion, and the vendor must pay whatever penalty is enforced.*

4. *It seems doubtful whether the transfer of the mortgage for* 2,500*l. on the retirement of A. B. as one of the trustees is within the proviso of sect.* 62 *of the Stamp Act,* 1891, *and therefore sufficiently stamped with a* 10*s. deed stamp. Was the opinion of the Commissioner taken ?*

STATUTE.

See ACT OF PARLIAMENT.

STATUTORY DECLARATION.

See BIRTHS, MARRIAGES, AND DEATHS—POSSESSORY TITLE.

(*q*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 13.

STOP ORDER.

See DISTRINGAS AND STOP ORDER.

STREET IMPROVEMENTS.

Expenses of sewering and paving streets (not being highways repairable by the inhabitants at large) incurred by a local authority under the Public Health Act are payable by the owners of the premises fronting, adjoining, or abutting on such streets (*r*), and until payment are a charge upon the premises in respect of which they have been incurred (*s*). The fact that no part of any such street itself belongs to such owner is immaterial (*t*). A railway company between whose property and the street is a fence is liable (*u*).

The time when the expenses first become a charge is the date of the completion of the works (*x*). An owner who after notices under the Act have been given and not complied with and the work has been executed by the public authorities, sells, even before apportionment and demand, is liable to the sum apportioned in respect of the premises sold (*y*), and if the purchaser pays the sum a vendor who has sold free from incumbrances is bound to indemnify him (*z*).

(*r*) 38 & 39 Vict. c. 55, s. 150.
(*s*) *Ibid.* s. 257.
(*t*) *Mayor of West Hartlepool* v. *Robinson*, 77 L. T. 387; 46 W. R. 218; 62 J. P. 35.
(*u*) *Reg.* v. *Newport Local Board*, 9 Jur. (N. S.) 746; 32 L. J. M. C. 97; 11 W. R. 263; 3 B. & S. 341.
(*x*) *Re Allen and Driscoll's Contract*, [1904] 1 Ch. 493; 2 Ch. 226; 73 L. J. Ch. 614; 52 W. R. 681; 68 J. P. 469; 2 L. G. R. 959; 20 T. L. R. 605; 90 L. T. 637.
(*y*) *Millard* v. *Balby-with-Hexthorpe Urban Council*, [1905] 1 K. B. 60; 74 L. J. K. B. 45; 91 L. T. 730; 53 W. R. 165; 2 L. G. R. 1248; 21 T. L. R. 8.
(*z*) *Stock* v. *Meakin*, [1899] 2 Ch. 496; [1900] 1 Ch. 683; 69 L. J. Ch. 401; 82 L. T. 248; 48 W. R. 420.

The expenses of sewering or paving a new street under the Metropolitan Management Acts, though not a charge, can be recovered from a purchaser of the premises (*a*); and if so recovered, a purchaser cannot recover the amount so paid from the vendor under the vendor's covenant against incumbrances (*b*); it is, therefore, very important on a purchase of property adjoining any street to inquire whether any expenses of sewering or paving have been incurred by the local authority. No register is kept of such charges, which are not "land charges" within the meaning of the Land Charges Registration and Searches Act, 1888, so as to require registration under that Act (*c*).

Expenses of sewering or paving streets (not being streets repairable by the inhabitants at large) incurred under the Private Street Works Act, 1892 (*d*), are a charge on the premises in respect of which they were incurred (*e*) as from the date of the completion of the works and not merely as from the date of the final apportionment (*f*), and an action lies to enforce such charge (*g*). These charges require registration at the office of the local authority (*h*); a purchaser can therefore satisfy himself by searching whether they exist.

The amount of the apportioned expenses of works under the Public Health Act, 1875 (*i*), and the Private Street Works Act, 1892 (*k*), are "incumbrances claims or demands suffered" against which a vendor who has conveyed the premises free from incumbrances after the charges for the amount created by these statutes came into operation is bound to indemnify the purchaser (*f*).

(*a*) *Egg* v. *Blaney*, 21 Q. B. D. 107; 57 L. J. Q. B. 460; 59 L. T. 65; 36 W. R. 893; 52 J. P. 517.
(*b*) *Ibid.*
(*c*) *Reg.* v. *Vice-Registrar of Office of Land Registry*, 24 Q. B. D. 178; 59 L. J. Q. B. 113; 62 L. T. 117; 38 W. R. 236.
(*d*) 55 & 56 Vict. c. 57, s. 6.
(*e*) *Ibid.* s. 13 (1).
(*f*) *Stock* v. *Meakin*, [1899] 2 Ch. 496; [1900] 1 Ch. 683; 69 L. J. Ch. 401; 82 L. T. 248; 48 W. R. 420.
(*g*) *West Ham Corporation* v. *Sharp*, [1907] 1 K. B. 445; 76 L. J. K. B. 307.
(*h*) 55 & 56 Vict. c. 57, s. 13 (2).
(*i*) 38 & 39 Vict. c. 55, ss. 150, 257.
(*k*) 55 & 56 Vict. c. 57, ss. 1, 12, 13.

Requisitions.

1. *Has X. Street been taken over by the local authority? Is the vendor or are his solicitors aware of any expenses having been incurred for sewering or paving such street or otherwise which have not yet been discharged?*

2. *Has any notice been given under sect.* 150 *of the Public Health Act, requiring Y. Street to be made up, paved, sewered, or otherwise?*

3. *The sewer under the property was unknown to the purchaser at the time he contracted to purchase. Compensation must be made for this defect, otherwise the purchaser will refuse to complete* (*m*).

SUCCESSION DUTY.

See Death Duties.

SUMMONS.

See Vendor and Purchaser Summonses.

SUPERFLUOUS LANDS.

Lands acquired under the provisions of the Land Clauses Consolidation Act, 1845 (*n*), or any special Act incorporating that statute by the promoters of an undertaking, but which are not required for the purpose of such undertaking, are subject to peculiar provisions by which the promoters of the undertaking are required to absolutely sell all such superfluous lands within the period described in the special Act, or, if no period be prescribed, within ten years after

(*m*) See *Pemsel and Wilson* v. *Tacher*, [1907] 2 Ch. 191; 76 L. J. Ch. 621; 97 L. T. 86.

(*n*) 8 & 9 Vict. c. 18.

the time limited by the special Act for the completion of the works; and, in default of such sale, the superfluous land vests in the adjoining owners in proportion to the extent of their lands respectively adjoining it (*o*). Land is not deemed superfluous if there is any expectation of its being eventually required for the purposes of the undertaking (*p*); on the other hand, the mere fact of a sale is not conclusive evidence that the lands conveyed are superfluous (*q*). As to the mode of dividing the superfluous lands between the adjoining owners, see *Moody* v. *Corbett* (*r*).

Before the promoters sell any superfluous lands they must, unless the lands are situate within a town, or are lands built upon or used for building purposes, first offer to sell them to the person then entitled to the lands from which they were originally severed; or, if such person refuses to purchase, or cannot, after diligent inquiry, be found, then they must offer to sell the lands to the several persons not being under disability (*s*) whose lands immediately adjoin the lands proposed to be sold, the offer being made to those persons in succession in such order as the promoters think fit (*t*). A contract for sale is, however, valid if it be entered into before the offer has been made to sell to a person having the right of preemption; but the conveyance cannot be executed until after the offer has been made (*u*).

Persons having the right of pre-emption must exercise it within six weeks of the offer, and on their refusal of the offer, or the expiration of six weeks, the right of pre-emption

(*o*) 8 & 9 Vict. c. 18, s. 127.

(*p*) *Betts* v. *Great Eastern Railway Co.*, 3 Ex. D. 182; 47 L. J. Ex. 461.

(*q*) *Hobbs* v. *Midland Railway Co.*, 20 Ch. D. 418; 51 L. J. Ch. 320; 46 L. T. 270; 30 W. R. 516; *Dunhill* v. *North Eastern Railway Co.*, [1896] 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. 644; 44 W. R. 231; 60 J. P. 228.

(*r*) L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; 14 L. T. 568; 14 W. R. 737.

(*s*) *London & South Western Railway Co.* v. *Blackmore*, L. R. 4 H. L. 610; 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305.

(*t*) 8 & 9 Vict. c. 18, s. 128.

(*u*) *London & Greenwich Railway Co.* v. *Goodchild*, 13 L. J. Ch. 224; 8 Jur. 455; 3 Rail. Cas. 507.

ceases (*x*). If they accept the offer, and the parties differ as to the price, the price must be ascertained by arbitration (*y*).

A declaration in writing before a justice by a disinterested person that an offer was made and refused, or was not accepted within six weeks, or that the persons entitled were out of the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of the lands in question, is in all Courts sufficient evidence of the facts stated in it (*x*).

Requisitions.

1. *The railway company must furnish the evidence referred to in section* 129 *of the Lands Clauses Consolidation Act,* 1845, *to show that the lands have been offered to the persons specified in the Act, and that such persons have not accepted the offer.*

2. *Some evidence must be furnished to satisfy the purchaser that the land which the company is selling is not required for the purposes of the undertaking. If such land were not superfluous its sale would be* ultra vires *and void.*

SURRENDER.

See COPYHOLDS—LEASEHOLD PROPERTY.

TACKING OF MORTGAGES.

Tacking is the right of a mortgagee having the legal estate to refuse to be redeemed except upon the terms that he is paid the whole of the moneys which he has advanced upon the security of the property.

(*x*) 8 & 9 Vict. c. 18, s. 129.
(*y*) *Ibid.* s. 130.

After notice by a subsequent incumbrancer, a prior mortgagee cannot, as against such incumbrancer, tack to his debt further advances made by him to the mortgagor (*z*), even when such further advances are made in pursuance of an obligation or covenant entered into by the first mortgagee at the time the first mortgage was made (*a*).

Although tacking cannot be resorted to in respect of moneys advanced by a mortgagee with notice of a prior equitable mortgage, yet it can where a third mortgagee, after having advanced money without notice of a prior incumbrance, obtains a transfer of the first mortgage and a conveyance of the legal estate after he has notice of the second mortgage, even though he do so after redemption action brought by the second mortgagee (*b*).

Tacking was abolished by the Vendor and Purchaser Act, 1874 (*c*), but revived by the Land Transfer Act, 1875 (*d*). The period during which priority could not be obtained by tacking was between the 7th August, 1874, and the 31st December, 1875, inclusive. It has been entirely abolished in Yorkshire since the 31st December, 1884 (*e*).

It is advisable for a second mortgagee, immediately on advancing his money, to give notice to the first mortgagee that the second mortgage has been effected. This will prevent not only first mortgagees, but also their successors in title from tacking (*f*). The notice should, where the consent of the first mortgagee can be obtained, be indorsed on the mortgage. This will prevent any further advances made by the first mortgagee having priority over the second mortgage; but the second mortgagee will still be liable to the risk of the mortgagor making a third mortgage, and the third mortgagee obtaining a transfer of the legal estate :

(*z*) *Hopkinson* v. *Rolt*, 9 H. L. C. 514; 7 Jur. (N. S.) 1209; 34 L. J. Ch. 468; 9 W. R. 900.
(*a*) *West* v. *Williams*, [1899] 1 Ch. 132; 68 L. J. Ch. 127; 79 L. T. 575; 47 W. R. 308.
(*b*) *Marsh* v. *Lee*, 2 Vent. 337; 1 Ch. Ca. 162; 3 Ch. Rep. 62.
(*c*) 37 & 38 Vict. c. 78, s. 7.
(*d*) 38 & 39 Vict. c. 87, s. 129.
(*e*) 47 & 48 Vict. c. 54, s. 16.
(*f*) *Freeman* v. *Laing*, [1899] 2 Ch. 355; 68 L. J. Ch. 586; 81 L. T. 167; 48 W. R. 9.

there does not appear to be any way of effectually guarding against this danger. The same precautions should be taken by a purchaser of an equity of redemption.

Requisitions.

1. *Can the mortgagor obtain the consent of the first mortgagee to notice of the proposed second mortgage being indorsed on the first mortgage in order to minimise the risk of the second mortgagee being excluded by tacking?*

2. *The mortgagor will be required to covenant with the proposed second mortgagee to give notice of the second mortgage to any subsequent mortgagee before raising any further loans on the property.*

TAXES.

See LAND TAX—RATES AND TAXES.

TENANTS BY ENTIRETIES.

A tenancy by entireties is that form of joint ownership which was created by a limitation before 1883 to husband and wife after their marriage. Such a limitation since the 1st January, 1883, when the Married Women's Property Act, 1882 (*g*), came into operation, creates a joint tenancy but this does not affect the rule that if land be limited to husband and wife and a third person, the husband and wife are entitled to one moiety only and the third person to the other moiety (*h*); a slight difference of language is, however, sufficient to prevent the application of the rule (*i*). And where a husband and wife were joint tenants before

(*g*) 45 & 46 Vict. c. 75.

(*h*) *Re Jupp, Jupp* v. *Buckwell*, 39 Ch. D. 148; 57 L. J. Ch. 774; 59 L. T. 129; 36 W. R. 712.

(*i*) *Re Dixon, Byram* v. *Tull*, 42 Ch. D. 306; 61 L. T. 718; 38 W. R. 91

marriage they still remained so after marriage, although they married before the Married Women's Property Act, 1882 (*k*), came into operation.

When husband and wife are tenants by entireties, a decree absolute for dissolution of marriage makes them joint tenants (*l*).

The principal peculiarities of tenancy by entireties are—

(1) There can be no partition.

(2) The survivor is absolutely entitled.

(3) Only the husband and wife together can dispose of the land.

Where husband and wife convey an estate to which they are entitled as tenants by entireties, the wife should acknowledge the deed as required by the Fines and Recoveries Act, 1833 (*m*). Prior to the 1st January, 1834, the conveyance could only be validly effected by levying a fine or suffering a recovery.

See ACKNOWLEDGMENTS—FINES AND RECOVERIES—JOINT TENANTS.

Requisition.

Mr. and Mrs. A. B., the proposed mortgagors, appear to have taken as tenants by entireties and to be entitled only to one moiety of the property offered as security and not to two-thirds as stated in the particulars of the security. Either the concurrence of the owner of the other moiety must be obtained, or the amount to be advanced will be reduced proportionately.

TENANTS IN COMMON.

Between tenants in common there is no survivorship. This is the most important practical distinction between this kind of tenancy and joint tenancy, though they differ

(*k*) 45 & 46 Vict. c. 75; Co. Litt. 187 b.

(*l*) *Thornley* v. *Thornley*, [1893] 2 Ch. 229; 62 L. J. Ch. 370; 68 L. T. 199; 41 W. R. 541; 3 R. 311.

(*m*) 3 & 4 Will. 4, c. 74, s. 5.

in some other respects; thus, equality of interest is not necessary between tenants in common and they may take different estates.

If the land taken by joint owners is not limited to them in unequal shares or for different estates, some words are necessary to indicate that such owners are to take as tenants in common, otherwise they take as joint tenants. The following expressions have been held to have that effect :—

To A. and B. as tenants in common.
To A. and B. equally.
To A. and B. jointly and equally.
To A. and B. respectively.
To A. and B. share and share alike.
Between A. and B.
Among A., B., and C.

There is no such thing as tenancy or ownership in common at law in the case of a chose in action, *e.g.*, mortgage money; but although joint owners of a chose in action are joint tenants at law they may be in equity owners in common (*n*).

If a joint tenant during life alienates his share, the joint tenancy is as between the alienee and the remaining joint tenants converted into a tenancy in common.

See JOINT TENANTS.

Requisition.

The devise contained in the testator's will to A. B. and C. D. jointly and equally seems to have made them tenants in common and not joint tenants (*o*). *As there was no survivorship on the death of C. D., a proper abstract must be delivered showing who is or are the person or persons now entitled to C. D.'s share.*

(*n*) See Williams' Principles of the Law of Personal Property, 17th edit., p. 456.

(*o*) *Ettricke* v. *Ettricke*, Amb. 656; *Perkins* v. *Baynton*, 1 B. C. C. 118.

TERMS, ATTENDANT AND SATISFIED.

The Satisfied Terms Act, 1845 (*p*), enacted that every term of years which, either by express declaration or construction of law, was attendant upon the inheritance or reversion of any lands on the 31st December, 1845, should on that day absolutely cease and determine, except that every such term should afford to every person the same protection against every incumbrance, charge, estate, right, action, suit, claim, and demand as it would have afforded to him if it had continued to subsist, and for such purpose such term was to be considered in law and equity to be a subsisting term. Terms which, either by express declaration or construction of law, become attendant upon the inheritance or reversion of any lands after the 31st December, 1845, absolutely cease and determine upon their becoming attendant; but this does not apply to terms assigned upon trust for securing mortgage debts, and subject thereto to attend the inheritance (*q*).

The effect of this Act is to extinguish every term of years as soon as the purpose for which it was created is satisfied, and to render unnecessary any surrender of the term to the owner of the inheritance or reversion.

In the rare cases where a title commences before 1846, the abstract should deduce the title to satisfied terms up to the 31st December, 1845, in order to show that they were satisfied and attendant upon the inheritance or reversion at that date, and consequently came within the Act, while, with regard to terms becoming satisfied and attendant since that date, it is sufficient to deduce the title until the date of satisfaction.

A term limited to raise portions is satisfied as soon as it is ascertained that there can be no persons entitled to portions, and a mortgage term when the mortgage is paid off (*r*).

(*p*) 8 & 9 Vict. c. 112.

(*q*) *Shaw* v. *Johnson*, 1 Drew. & Sm. 412; 7 Jur. (N. S.) 1005; 30 L. J. Ch. 646; 4 L. T. 461; 9 W. R. 629.

(*r*) *Anderson* v. *Pignet*, L. R. 8 Ch. 180; 40 L. J. Ch. 310; 27 L. T. 740; 21 W. R. 150.

Requisitions.

1. *As the vendor is selling a term of years to be created for the purpose of securing portions, evidence must be given to show that the necessity for the raising of the portions exists.*

2. *The will is insufficiently abstracted so far as regards the term of* 800 *years, and a supplemental abstract must be delivered showing the trusts of this term. If the term was one for raising portions, what, if any, money has been actually raised thereunder?*

3. *The abstract should be supplemented by showing the devolution of the terms which became satisfied in* 1840 *from that date until the* 31*st December*, 1845.

TERMS, ENLARGEMENT OF LONG.

See LEASEHOLD PROPERTY.

TITHE RENTCHARGE.

In early times tithes were probably voluntary contributions, but in or about the eighth century their payment became compulsory. They were frequently appropriated by a neighbouring monastery, called the impropriators, who procured and paid a vicar to perform the services. In the course of time the tithe became divided into the great tithe taken by the impropriator as rector and the small tithe taken by the vicar. On the dissolution of the monasteries most of the great tithes fell into the hands of the Crown and were granted to laymen. Tithe formerly consisted of the payment in kind by the cultivators of the soil of one-tenth of the produce for the benefit of the Church, but now, under the Acts which have been passed for their commutation, a rentcharge, varying with the price of corn, has been substituted for tithes in kind. The rate for the years 1918-1925 inclusive is £109 3*s.* 11*d.* per £100 of the original commuted value; after 1925 it will be determined by the average price of corn during the preceding fifteen years (*s*).

(*s*) Tithe Act, 1918 (8 & 9 Geo. 5, c. 54), s. 1.

All land is deemed to be subject to tithe; no mention, therefore, need, in general, be made relating to it in particulars of sale; and a purchaser is not entitled to any compensation in respect of it, even though the tithe rentcharge should amount to two-thirds of the annual value of the land.

The abstract should disclose the amount of tithe rentcharge payable, and if this does not appear, inquiry should be made on the subject. It may also be useful for a purchaser to inquire who is the tithe owner.

Two-thirds of the annual value may be taken as the extreme limit of tithe, as any amount greater than this may in general be remitted under the Tithe Act, 1891 (*s*).

When land is sold free from tithe rentcharge, the award of the Commissioners or Ministry of Agriculture showing such to be the case should be called for by the purchaser.

The vendor of a portion only of a close subject to a single tithe rentcharge is under no obligation to apportion it, or procure its apportionment (*t*). In such a case it is for the purchaser to agree with the owner of the remaining portion of the close as to what proportion of the charge shall be borne by each. No such agreement will, however, affect the right of the tithe owner to distrain for the whole of his tithes on any portion of the original close; but by the Tithe Act, 1836 (*u*), power was given the Commissioners of Land Tax to alter the apportionment with the consent of two justices, and this power has been extended and modified by various subsequent statutes. By the Tithe Act, 1842 (*x*), the power is extended to cases in which lands charged with one entire rentcharge have become vested in several owners, and the Act gives the same power to the Tithe Commissioners without the necessity of applying to the justices, but no rentcharge is to be sub-divided so that any subdivision is less than 5*s*.; and by the Tithe Act, 1860 (*y*),

(*s*) 54 & 55 Vict. c. 8, s. 8.
(*t*) *Re Ebsworth and Tidy's Contract*, 42 Ch. D. 23; 58 L. J. Ch. 665; 60 L. T. 841; 37 W. R. 657; 54 J. P. 199.
(*u*) Tithe Act, 1836 (6 & 7 Will. 4, c. 71), s. 72.
(*x*) 5 & 6 Vict. c. 54, s. 14.
(*y*) 23 & 24 Vict. c. 93, s. 11.

extensive powers of alteration and redistribution of the rentcharge are given to the Tithe Commissioners who are now represented by the Ministry of Agriculture.

The Tithe Commissioners formerly had power to assign a district within which all lands then or thereafter cultivated as hop-grounds, orchards, or market gardens became liable to an extraordinary tithe rentcharge per acre in addition to the ordinary tithe (*z*). By the Extraordinary Tithe Redemption Act, 1886, the capital value of the charge, taking in consideration the prospect of discontinuance of the special cultivation in respect of which the charge was imposed (*a*), was required to be ascertained by the Commissioners, and an annual charge of 4 per cent. on this capital value was substituted for the original charge (*b*). By the operation of this Act, a permanent charge was imposed upon such lands as were liable to extraordinary tithe rentcharge on the 25th June, 1886, in lieu of the old charge, which lasted only so long as the special mode of cultivation; and such a charge cannot since that date arise in respect of lands put into cultivation as hop-grounds, orchards, or market gardens (*c*).

In order to redeem tithe rentcharge an application must be made to the Ministry of Agriculture, who may order the redemption of a tithe rentcharge not exceeding 20*s*. upon the application of the owner of the land charged or of the tithe owner (*d*). Where the rentcharge is greater than 20*s*. the order can only be made on the application of the owner of the land (*e*). The mode of ascertaining the amount payable for redemption will be found in the First Schedule to the Tithe Act, 1918.

An extraordinary tithe rentcharge may be redeemed at any time by the owner of the land charged by payment of twenty-five times the annual amount of the charge, and application need not be made to the Ministry of Agriculture.

(*z*) Tithe Act, 1836 (6 & 7 Will. 4, c. 71), s. 40.
(*a*) 49 & 50 Vict. c. 54, ss. 2, 3.
(*b*) *Ibid.* s. 4.
(*c*) *Ibid.* s. 1.
(*d*) Tithe Act, 1878 (41 & 42 Vict. c. 42), s. 3.
(*e*) *Ibid.* s. 4; Tithe Act, 1918 (8 & 9 Geo. 5, c. 54), s. 3.

Where the tithe belongs to a benefice the money must be paid to the governors of Queen Anne's Bounty (*f*).

By the Tithe Act, 1891 (*g*), tithe rentcharge is payable by the owner of the land out of which it issues, notwithstanding any contract between him and the occupier, and any contract made between an occupier and owner after the 26th of March, 1891, for the payment of the tithe rentcharge is void (*h*). Where the occupier is liable under a contract made before the Act to pay the tithe rentcharge he is no longer bound by that part of his contract, but he is liable to pay to the owner such sum as the owner has properly paid on account of the tithe rentcharge (*i*).

Tithe rentcharge is "rent" within sections 1 and 2 of 3 & 4 Will. 4, c. 27, as amended by section 1 of 37 & 38 Vict. c. 57, consequently non-payment for twelve years affords a defence to an action for its recovery (*k*).

Requisitions.

1. *Will the vendor give full particulars as to any tithe rentcharge affecting the property, stating, amongst other things, to whom it is payable?*

2. *Has any apportionment been made of the tithe rentcharge payable in respect of the close of which the plot contracted to be sold formerly formed part? If so, what is the apportioned sum payable in respect of such plot? The award should be produced.*

3. *The property is stated in the particulars to be free from tithe. The award of the Commissioners to this effect must be produced.*

4. *It is stated in the particulars that the vendor is the tithe owner, and will release his right to tithes. A proper abstract of the vendor's title to the tithes must be furnished.*

(*f*) 49 & 50 Vict. c. 54, s. 5.
(*g*) 54 & 55 Vict. c. 8.
(*h*) *Ibid.* s. 1 (1).
(*i*) *Ibd.* s. 1 (2).
(*k*) *Payne* v. *Esdaile*, 13 A. C. 613; 59 L. T. 568; 37 W. R. 273; 53 J. P. 100.

TITLE.

See COVENANTS—LENGTH OF TITLE—ROOT OF TITLE.

TITLE DEEDS AND THEIR CUSTODY.

On a purchase of real or leasehold property, the purchaser is entitled to have all such deeds and documents of title as relate exclusively to the property purchased handed over on completion; but where the vendor retains any part of a real or leasehold estate to which any of the documents of title relate, he is entitled to retain such documents (*l*).

In ordinary cases the old practice of giving covenants for production and safe custody has been superseded by the provisions of the Conveyancing Act, 1881 (*m*), substituting an acknowledgment and undertaking.

The obligations imposed by an acknowledgment are—

(1) To produce the documents at all reasonable times for inspection and for comparison with abstracts or copies of them.

(2) To produce the documents at any trial or any other occasion on which the production may properly be required for supporting the title of the person to whom the acknowledgment has been given.

(3) To deliver true copies of or extracts from the documents (*n*).

The obligation imposed by an undertaking is to keep the documents safe, whole, uncancelled, and undefaced, unless prevented by fire or other inevitable accident (*o*).

An acknowledgment or undertaking must be in writing, but need not be by deed.

In ordinary cases the acknowledgment and undertaking are, when the person giving them is a party to the instru-

(*l*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 5; *Re Williams and Duchess of Newcastle's Contract*, [1897] 2 Ch. 144; 66 L. J. Ch. 543; 76 L. T. 646; 45 W. R. 627; 61 J. P. 454.
(*m*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 9.
(*n*) *Ibid.* s. 9 (4).
(*o*) *Ibid.* s. 9 (9).

ment, included in it; but when in subsequent dealings it may be desirable to keep off the title some deed included in the acknowledgment, a separate document should be employed, as it is when given by persons not parties.

The provisions referred to above only apply to documents in the possession of and retained by the covenantor; therefore, where a purchaser requires a covenant from A. for production of documents in the hands of B., who is unwilling or unable to give a covenant or an acknowledgment (*e.g.*, a mortgagee or trustee), an express covenant must still be given by A.; and such a covenant is also necessary in the case of land situate abroad.

It is now the almost universal practice to make use of the statutory provisions on behalf of trustees and mortgagees as well as of absolute owners, omitting the undertaking for safe custody.

With regard to the documents not in the possession of the vendor, but as to which he holds covenants for production, express or statutory, the benefit of such covenants will run with the land in favour of the purchaser (*p*). So also the benefit of an acknowledgment under the Conveyancing Act, 1881, goes to the person (other than a lessee at a rent) claiming under the person to whom it is given (*q*), and although there is no corresponding provision as to the devolution of the benefit of an undertaking for safe custody, there can be little doubt that it would be held to run along with the acknowledgment.

Section 3 (6) of the Conveyancing Act, 1881, casting on a purchaser, in the absence of express contract, the expense of production of deeds and other documents not in the vendor's possession, does not affect the purchaser's right to have the title deeds handed to him on completion, and on an open contract the vendor must bear the expense of obtaining title deeds required by the purchaser to be handed over on completion, although not in the vendor's possession, and not referred to in the abstract (*r*).

(*p*) *Barclay* v. *Raine*, 24 R. R. 206; 1 Sim. & St. 449.
(*q*) 44 & 45 Vict. c. 41, s. 9 (3).
(*r*) *Re Duthy and Jesson's Contract*, [1898] 1 Ch. 419; 67 L. J. Ch. 218; 78 L. T. 223; 46 W. R. 300.

Where the title deeds of property sold are to be retained by a vendor, it is expedient for a purchaser, if possible, to arrange that notice of the fact of part of the property having been sold should be indorsed on one of the principal title deeds so retained (*s*).

A purchaser has a right to have a memorandum indorsed upon or annexed to a deed retained by the vendor forming part of the common title of any restrictive covenants or other rights conferred on the purchaser over the land retained (*t*).

A vendor's inability to furnish a purchaser with a legal covenant to produce and furnish copies of documents of title is no objection to title where the purchaser will, on the completion of the contract, have an equitable right to the prduction of such documents (*u*).

A tenant for life who is seised of the legal estate is entitled to the possession of the title deeds (*x*).

On the expiration of a lease by effluxion of time the lessor is entitled to the lease as well as the counterpart, but when a term is surrendered and a longer term granted to the same lessee such lessee is entitled to retain the original lease (*y*).

See LOST TITLE DEEDS—VERIFICATION OF ABSTRACT.

Requisitions.

1. *Are the abstracted deeds and documents in the possession of the vendor, and will they all be handed over on completion? If not, state the exceptions.*

2. *Which of the deeds and documents abstracted in chief will be handed over to the purchaser, and which retained by any, and what, other persons under condition No. ? Who will acknowledge the right to*

(*s*) *Keates* v. *Lyon*, L. R. 4 Ch. 218, at 226; 38 L. J. Ch. 357; 20 L. T. 255; 17 W. R. 338.
(*t*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 11.
(*u*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 3.
(*x*) *Duncombe* v. *Mayer*, 8 Vesey, 320, and cases therein cited.
(*y*) *Knight* v. *Williams*, [1901] 1 Ch. 256; 70 L. J. Ch. 92; 83 L. T. 730; 49 W. R. 427.

the production and undertake for the safe custody of those retained?

3. *In whose possession are the indentures of , 19 , and , 19 , respectively, whereof the right to production is acknowledged in the conveyance of the of , 19 , and where can they be inspected by the purchaser's solicitor?*

4. *As the vendors are trustees, they will, it is assumed, only acknowledge the purchaser's right to production of the title deeds to be retained. Which of the parties to the conveyance will undertake for the safe custody of such deeds?*

5. *The indentures of , 19 , and , 19 , being in the hands of C. D. and E. F. as trustees of the settlement, the vendor must enter into express covenants for their safe custody, as the trustees will not give an undertaking.*

6. *Will the vendor allow* [or *In accordance with clause of the contract for sale the purchaser will require*] *notice of the conveyance of the premises contracted to be sold to be indorsed on the indenture of , 19 , retained by the vendor?*

TITLE, WANT OF.

If a purchaser discover that the vendor has not power to convey a material part of the property contracted to be sold, or to compel a conveyance from any other person, he may (apart from condition) rescind the contract, though the time allowed for completion has not yet expired (*z*); but the objection must be taken and insisted on promptly on the want of title being discovered (*a*). It seems doubtful whether in such a case an action for damages would lie if

(*z*) *Brewer* v. *Broadwood*, 22 Ch. D. 105; 52 L. J. Ch. 136; 47 L. T. 508; 31 W. R. 115; *Bellamy* v. *Debenham*, [1891] 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257.

(*a*) *Wylson* v. *Dunn*, 34 Ch. D. 569; 56 L. J. Ch. 855; 56 L. T. 192; 35 W. R. 405; 51 J. P. 458.

the vendor, on the day fixed for completion, were able and willing to give the purchaser a proper conveyance (*b*).

Where it turns out that the vendor has no title to part of the premises contracted to be sold, of which fact the purchaser was ignorant when he entered into the contract, and the purchaser is desirous of completing, the Court will as a rule enforce specific performance against the vendor so far as he can carry out the contract, giving compensation for the defect; such an event is, however, usually the subject of a special condition on which the rights of the parties will turn.

Upon a contract for the sale and purchase of real estate, if the vendor, without fraud or default on his part is incapable of making a good title, the proposed purchaser is not entitled to recover compensation in damages for the loss of his bargain, but only his expenses actually incurred in relation to the contract (*c*), but where there is default on behalf of the vendor—*e.g.*, where the consent of a lessor being required for the sale of leasehold property the defendant induces the lessor to withhold it, damages can be recovered (*d*).

See POSSESSORY TITLE—RESCISSION.

Requisition.

Having regard to the fact that the vendor shows no title to the piece of land [*coloured blue on the plan*], *the purchaser will insist upon his right to compensation, but will complete subject and without prejudice thereto.*

TRAITORS.

See CONVICTS, TRAITORS AND FELONS.

(*b*) *Bellamy* v. *Debenham*, [1891] 1 Ch. 412; 60 L. J. Ch. 166; 64 L. T. 478; 39 W. R. 257.
(*c*) *Bain* v. *Fothergill*, L. R. 7 H. L. 158; 43 L. J. Ex. 243; 3 L. T. 389; 23 W. R. 261.
(*d*) *Day* v. *Singleton*, [1899] 2 Ch. 320; 68 L. J. Ch. 593; 81 L. T. 306; 48 W. R. 18.

TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

Upon the death of one of two or more trustees, his estate devolves upon the remaining trustee or trustees.

The devolution of the estate upon the death of a sole or sole surviving trustee depends upon the nature of the estate and the time of his death :

(1) His freehold trust estates—

(i) If he died before the 7th August, 1874, vested in the person, if any, to whom he devised them, or if he died intestate with regard to such estates, they devolved upon his heir-at-law.

[A general devise of real estates includes lands of which a testator was seised as trustee, unless a contrary intention appears (*e*).]

(ii) If he died on or after the 7th August, 1874, and before the 1st January, 1876, and was a "bare trustee" seised in fee simple, the trust estate devolved upon his legal personal representative (*f*) until the 1st January, 1876, when it shifted to his heir-at-law or devisee, unless it had been previously disposed of by his legal personal representative (*g*).

(iii) If he died on or after the 7th August, 1874, and before the 1st January, 1876, and was not a "bare trustee" seised in fee simple, the trust estate vested in the person (if any) to whom it was devised by his will, or if not so devised, then it devolved upon his heir-at-law.

(iv) If he died on or after the 1st January, 1876, and before the 1st January, 1882, intestate as to the trust property and was a "bare trustee" seised in fee simple, and the land was not regis-

(*e*) *Lord Braybroke* v. *Inskip*, 8 Ves. jun. 417; 7 R. R. 106; *Bainbridge* v. *Lord Ashburton*, 6 L. J. Ex. Eq. 73; 2 Y. & C. Ex. 347.

(*f*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 5.

(*g*) The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 48; *Christie* v. *Ovington*, 1 Ch. D. 279; 24 W. R. 204.

tered under the Land Transfer Act, 1875, the trust estate devolved upon his legal personal representative (*h*).

(v) If he died on or after the 1st January, 1876, and before the 1st January, 1882, and was not a "bare trustee" seised in fee simple, or if (whether a bare trustee or not) he left a will disposing of the trust property, or if the land was registered under the Land Transfer Act, 1875, the trust estate vested in the person (if any) to whom it was devised, or if not so devised it devolved upon his heir-at-law.

(vi) If he died on or after the 1st January, 1882, the trust estate devolved upon his legal personal representative, notwithstanding any testamentary disposition (*i*).

(2) His copyhold and customary trust estates—

(i) If he died before the 1st January, 1882, devolved upon his customary heir until the admittance of the testator's devisee (if any) (*k*).

[The customary heir may himself be admitted, notwithstanding that the testator has disposed of the property by will; but in this case there should be a release of the devisee's right of admittance, or it should appear that the customary heir was admitted with the consent of the devisee (*l*).]

(ii) If he died on or after the 1st January, 1882, and before 16th September, 1887, and was tenant on the Court rolls of any manor in respect of any trust estate, such estate devolved upon his legal personal representative until the 16th September, 1887, when it shifted to his customary heir or devisee, unless in the meantime

(*h*) The Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 48.
(*i*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.
(*k*) *Garland* v. *Mead*, L. R. 6 Q. B. 441; 40 L. J. Q. B. 179; 24 L. T. 421; 19 W. R. 1156.
(*l*) *Steele* v. *Waller*, 3 L. T. 74; 6 Jur. (N. S.) 1004; 28 Beav. 466.

a conveyance had been made by the personal representative (*m*).

(iii) If he died on or after the 16th September, 1887, and was tenant on the Court rolls of any manor in respect of any trust estate, such estate devolved upon his customary heir or devisee in the same way as if he had died before the 1st January, 1882.

(iv) If he died on or after the 1st January, 1882, and was not tenant on the Court rolls of any manor, the trust estate devolved upon his legal personal representative.

(3) His leasehold trust estates have always devolved upon his legal personal representative.

The provisions of the Conveyancing Act, 1881 (*n*), as to the devolution of trust and mortgage estates are not affected by those of the Land Transfer Act, 1897, as to real estate vested in a deceased (*o*).

In the absence of provision to the contrary in the document creating a trust, on the death of one of the trustees the office of trustee devolves on the survivors or survivor, who may exercise all powers and trusts unless the contrary is declared in the instrument creating them (*p*).

It does not necessarily follow that the office of trustee descends to the person upon whom the trust estate devolves (*q*). Where the office was not intended by the settlement to be a personal one, it devolves with the estate, and in the case of a trust of real estate (other than copyholds or customary property) where the sole surviving trustee dies on or after the 1st January, 1882, it devolves upon his personal representatives even if limited to his heirs and assigns (*r*); but if the office was intended by the

(*m*) The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30; The Copyhold Act, 1887 (50 & 51 Vict. c. 73), s. 45; *Re Mills' Trusts*, 37 Ch. D. 312; 40 Ch. D. 14; 57 L. J. Ch. 466; 58 L. T. 620; 60 L. T. 442; 36 W. R. 393; 37 W. R. 81.

(*n*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.

(*o*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 2.

(*p*) Conveyancing Act, 1881 (44 & 45 Vct. c. 41), s. 38; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 22.

(*q*) *Mortimer* v. *Ireland*, 11 Jur. 721; 16 L. J. Ch. 416; 6 Hare, 196.

(*r*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30.

settlement to be a personal one, the legal personal representative of the last surviving trustee was formerly precluded from exercising the powers and trusts, and the appointment of a new trustee was necessary, but the personal representatives of a sole trustee or a last surviving trustee are now by statute empowered to exercise powers or trusts until the appointment of a new trustee; even this does not apply to copyhold or customary property (*s*).

Requisitions.

1. *A. B. having died after* 1881, *the devise in his will of trust estates to C. D. is of no effect, and the legal personal representative of A. B. must join in the conveyance.*

2. *How did X. Y. cease to be a trustee of the indenture of , 19 ? Was it by death or retirement, or how otherwise? The usual evidence on the point should be supplied.*

3. *Why did not A. B. the second trustee of the settlement of , 19 , join in the conveyance of , 19 ? If he had died or retired previously to the last-mentioned date, his death should be stated on the abstract and proved in the usual way.*

TRUSTEES, SALES AND MORTGAGES BY.

Prior to the passing of Lord Cranworth's Act (*t*), new trustees could only be appointed in pursuance of a power contained in the instrument creating the trust, or by the Court. The provisions of that Act for the appointment of new trustees (*u*) have been repealed and re-enacted with slight alterations as from the 1st January, 1882 (*x*).

(*s*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 8.
(*t*) 28th August, 1860.
(*u*) 23 & 24 Vict. c. 145, s. 27.
(*x*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 31; Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 5; The Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 17; Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 16; The Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 10, 47.

The statutory power now arises where a trustee, either original or substituted, and whether appointed by the Court or otherwise, is dead or remains out of the United Kingdom for more than twelve months, or desires to be discharged, or refuses, or is unfit to act, or is incapable of acting; whereupon the person or persons nominated for the purpose of appointing new trustees by the instrument creating the trust, or if there is no such person able and willing to act, then the surviving or continuing trustees or trustee, or the personal representatives of the last surviving or continuing trustee, or of a sole trustee (*y*), may, by writing, appoint a new trustee or new trustees; the provisions relative to a continuing trustee include a refusing or retiring trustee if willing to act (*x*).

On a statutory appointment, the number of trustees may be increased (*z*), and where only one trustee was originally appointed, it is not obligatory to appoint more than one trustee; nor is it necessary to fill up the original number of trustees where more than two were originally appointed. A trustee, except where only one trustee was originally appointed, will not be discharged under the section from his trust unless there will be at least two trustees to perform the trust (*a*), and where there are more than two trustees, one of them may by deed declare that he is desirous of being discharged from the trust, and if his co-trustee and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee and the vesting in the co-trustees alone of the trust property, such trustee is discharged without a new trustee being appointed in his place (*b*). The Trustee Act, 1893, in re-enacting the provisions of the Conveyancing Acts with regard to the appointment of new trustees, extended such provisions to the case of a trustee desiring to be discharged from "all

(*y*) *Re Shafto's Trusts*, 29 Ch. D. 247; 54 L. J. Ch. 885; 53 L. T. 261; 33 W. R. 728.

(*z*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 31 (2), (6); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (a).

(*a*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 31 (3); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (c).

(*b*) Conveyancng Act, 1881 (44 & 45 Vict. c. 41), s. 32; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 11.

or any of the trusts or powers reposed in or conferred on him" (*c*).

On a statutory appointment of new trustees, a separate set may be appointed in respect of any part of the trust property held on trusts distinct from those relating to any other part of the trust property, and if only one trustee was originally appointed, then one separate trustee may be appointed (*d*), and that notwithstanding that no new trustees are to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees (*e*).

On the appointment of new trustees under the statutory power, the trust property may, without any conveyance or assignment, be vested in the new and continuing trustees as joint tenants by a declaration in the deed of appointment to the effect that any estate or interest in any land subject to the trust or the right to recover and receive any debt or other chose in action shall so vest (*f*); and a deed by which a retiring trustee is discharged may contain a like declaration by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, and such declaration, without any conveyance or assignment, vests in the continuing trustees as joint tenants the estate, interest or right to which it relates (*g*).

Neither the legal estate or interest in copyhold or customary land, nor land mortgaged to the trustees, nor shares, stocks, or other property transferable only in the books kept by a company or other body, or in manner directed by Act of Parliament, can be vested by declaration (*h*).

The statutory powers and provisions relating to the

(*c*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (1).
(*d*) Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 5; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (b).
(*e*) Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 6; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10 (2) (b).
(*f*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34 (1); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (1).
(*g*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34 (2); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (2).
(*h*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34 (3); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12 (3).

appointment of new trustees and the vesting of the trust property apply also to trustees for the purposes of the Settled Land Acts (*i*).

The High Court, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to do so without the assistance of the Court, may make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there be no existing trustee (*k*); and in such case the Court may make an order vesting the land in any such person (*l*).

The trust property held by a trustee who is convicted of felony does not pass to the administrator of the convict's property (*m*), nor does that held by a bankrupt trustee pass to his trustee in bankruptcy (*n*); but the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony or is a bankrupt (*o*), and may make a vesting order vesting the felon's or bankrupt's trust property in the new and continuing trustees (*p*).

Where a person seised of or entitled in possession to land or to the receipt of its rents and profits, or having the powers of a tenant for life under the Settled Land Acts, is an infant, the powers of a tenant for life may be exercised on his behalf by the trustees of the settlement (*q*).

Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be

(*i*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 17; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 47 (1).

(*k*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 32; Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 9; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25.

(*l*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 34; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (i).

(*m*) 4 & 5 Will. 4, c. 23, s. 3; 13 & 14 Vict. c. 60, s. 46; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 48.

(*n*) Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 15; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 44 (1); Bankruptcy Act, 1918 (4 & 5 Geo. 5, c. 59), s. 38 (1).

(*o*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 32; Trustee Act, 1852 (15 & 16 Vict. c. 55), ss. 8, 9; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 147; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 25 (1).

(*p*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 34; Trustee Act, 1852 (15 & 16 Vict. c. 55), ss. 8, 9; Bankruptcy Act, 1883 (46 & 47 Vict. c 52), ss. 8, 9; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (i).

(*q*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 2 (10) (1), 59, 60.

made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for any other land, or a partition is to be made with him of land, an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement stand in the place of and represent the tenant for life whose powers in respect of negotiating and completing the transaction they have in addition to their own powers as trustees (*r*).

Where a settlement contains powers of sale or other powers similar to those vested in the tenant for life by the Settled Land Acts, the consent of the tenant for life is, notwithstanding anything in the settlement, necessary to the exercise by the trustees of such powers (*s*); but the consent of one of two or more persons constituting the tenant for life is sufficient (*t*).

Any land or interest in land which is subject to a trust for sale and for the application of the money to arise from the sale or its income, or the income of the land until sale, or any part of that money or income, for the benefit of one or more persons for life or other limited period, is deemed to be settled land, and the person entitled to the income of the land or interest until sale is deemed to constitute the tenant for life; therefore, such person can, notwithstanding the trust, exercise the powers of a tenant for life under the Settled Land Acts (*u*); but on the other hand the consent of the tenant for life is not necessary to enable the trustees to sell, unless so provided by the settlement (*x*). After the 2nd July, 1884, in case of a trust for sale the tenant for life cannot exercise his powers without the leave of the Court, and after such leave the trustees cannot exercise any power to which the leave extends. The order of the Court giving such leave may be registered against the trustees as a *lis pendens* under the description of "the trustees for the purposes of the Settled Land Act, 1882," and persons dealing with them are not affected by the order unless so

(*r*) Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 12.
(*s*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 56.
(*t*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 6 (2), (3).
(*u*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 63.
(*x*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 6 (1), (3).

registered (*y*); consequently, if a purchaser on searching finds no order registered, he may safely accept a title from the trustees.

Where the instrument creating a trust gives a power of sale to the trustees with the consent of the tenant for life, and such tenant for life encumbers or parts with his life estate or becomes bankrupt, the consent of the tenant for life remains necessary; but a good title cannot be made without the concurrence also of persons who have obtained interests by such events (*z*).

Trustees for sale must carry out the directions contained in the instrument creating the trust, if not illegal. Thus, if the trust be for sale on the death of the tenant for life, they cannot sell during his lifetime (*a*).

A trust for sale of leasehold propertly held under one lease may be validly exercised by offering the property in lots, subject to a condition that if all the lots shall be sold at the sale, the purchaser of the largest in value shall execute an underlease for the whole of the term, less one day, to the purchaser of the other lots at an apportioned rent; but that if any of the lots should remain unsold the vendors should grant such an underlease to the purchaser of each of the lots sold (*b*).

If trust property is sold at a gross undervalue, a breach of trust is committed which affects the title in the hands of the purchaser (*c*).

The Court will not enforce specific performance of a contract which amounts to a breach of trust (*d*); but trustees who have purchased property in breach of trust can make a title to a purchaser on a re-sale. They must, however, unless some of the persons beneficially entitled are infants,

(*y*) Settled Land Act, 1884 (47 & 48 Vict. c. 18), s. 7.

(*z*) *Re Bedingfield and Herring*, [1893] 2 Ch. 332; 62 L. J. Ch. 430; 68 L. T. 634; 41 W. R. 413; 3 R. 483.

(*a*) *Want* v. *Stallibrass*, L. R. 8 Ex. 175; 42 L. J. Ex. 108; 29 L. T. 293; 21 W. R. 685; *Re Bryant and Barningham*, 44 Ch. D. 218; 59 L. J. Ch. 636; 63 L. T. 20; 38 W. R. 469.

(*b*) *Re Judd and Poland and Skelcher's Contract*, [1906] 1 Ch. 684; 75 L. J. Ch. 403; 94 L. T. 595; 54 W. R. 513.

(*c*) *Stevens* v. *Austen*, 30 L. J. Q. B. 212; 3 L. T. 810; 7 Jur. (N. S.) 873; 3 E. & E. 685.

(*d*) *Wood* v. *Richardson*, 5 Jur. 623; 4 Beav. 174, at p. 176.

obtain the concurrence of at least one of their *cestuis que trust* in order to show that the latter have not elected to take the property as realty (*e*).

A trust for sale continues exercisable by trustees without the concurrence of the beneficiaries, even when such beneficiaries are adult and absolutely entitled, until the land is actually conveyed to or under the direction of the persons entitled to the proceeds of sale of the land (*f*).

Where, in a deed or will, there is a limitation of property to one for life, and upon his death upon trust to divide amongst certain persons with power to the trustees to sell, such power of sale may be exercised within a reasonable time after the death of the tenant for life, and after the property has become absolutely vested in possession, provided such appears by the instrument to have been the intention. A power of sale, however, is exercisable after the property has become absolutely vested in possession only if, on the construction of the particular instrument, it appears to be the intention of the settlor or testator that it should be then exercised (*g*).

Where an action is pending for the execution of a trust, the sanction of the Court to any proposed sale by trustees is necessary (*h*).

Where a purchaser contracts to purchase property from trustees, he cannot be compelled to accept a conveyance from the tenant for life under the powers of the Settled Land Acts (*i*).

Where trustees, under an instrument coming into operation after the 31st December, 1881, have a trust for or power of sale, in the absence of a contrary intention expressed in the instrument creating the trust or power,

(*e*) *Re Patten and the Guardians of the Edmonton Union*, 52 L. J. Ch. 787; 48 L. T. 870; 31 W. R. 783; *Re Jenkins' and Randall's Contract*, [1903] 2 Ch. 362; 72 L. J. Ch. 693; 88 L. T. 628.

(*f*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 10.

(*g*) *Biggs* v. *Peacock*, 20 Ch. D. 200; 22 Ch. D. 284; 51 L. J. Ch. 555; 52 L. J. Ch. 1; 46 L. T. 582; 47 L. T. 341; 30 W. R. 605; 31 W. R. 148; *Re Tweedie and Miles*, 27 Ch. D. 315; 55 L. J. Ch. 71; 33 W. R. 133.

(*h*) *Walker* v. *Smallwood*, Amb. 676.

(*i*) *Re Bryant and Barningham*, 44 Ch. D. 218; 59 L. J. Ch. 636; 63 L. T. 20; 38 W. R. 469.

they may sell or concur with any person in selling all or part of the property, subject or not to prior charges, by public auction or private contract subject to such conditions as they think fit (*k*); and trustees for sale under instruments coming into operation prior to the 1st January, 1882, but after the 28th August, 1860, had almost identical powers under Lord Cranworth's Act (*l*).

In the following cases trustees hold land in trust for sale :

(1) Where the property has become vested in them by foreclosure (*m*).

(2) Where the property was originally mortgaged and they have acquired a title under the Real Property Limitation Acts (*m*).

(3) Where they have purchased the property under a power to invest in real or leasehold property (*n*).

(4) Where they have purchased the property in breach of trust, for in this case it is their duty to remedy the breach by a re-sale.

The insertion of conditions of an unnecessarily depreciatory nature was formerly a ground of objection to a title through trustees; but since the 24th December, 1888, no sale by a trustee can be impeached by any beneficiary on this ground, unless it appears that the consideration for the sale was thereby rendered inadequate; and no sale by a trustee can, after the execution of the conveyance, be impeached as against the purchaser on this ground, unless it appears that the purchaser was acting in collusion with the trustee (*o*).

Trustees, to whom an estate is devised for the whole estate of the testator therein by will coming into operation after the 12th August, 1859, charged with debts or legacies, but without any provision for raising them, have, under Lord St. Leonards' Act, power to sell or mortgage; but they

(*k*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 35; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 13.
(*l*) 23 & 24 Vict. c. 145, s. 35.
(*m*) Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 8.
(*n*) *Ibid.* s. 9.
(*o*) Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 3; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 14.

have not power to do so if the estate is devised to persons beneficially in fee or in tail (*p*).

From the 28th August, 1860, to the 31st December, 1882, inclusive, trustees had power, under Lord Cranworth's Act, to mortgage for the purpose of raising money required for equality of exchange or for renewal of a lease (*q*). This provision was repealed by the Settled Land Act, 1882 (*r*); but by the Trustee Act, 1888, a similar power for the purpose of renewing a lease is given to trustees whenever their trusts were created (*s*).

Trustees, as persons authorized or required to pay estate duty, appear to have power under the Finance Act, 1894, to raise the amount of duty, and interest, and expenses by sale or mortgage of, or a terminable charge on, the property or any part of it (*t*).

Before the 1st January, 1882, persons paying money to trustees and having notice of the trust were bound to see to its application, except—

(1) Where the instrument creating the trust provided otherwise.

(2) Where the receipt was given between the 1st January, 1845, and the 30th September, 1845, inclusive, unless the contrary was expressly declared by the instrument creating the trust (*u*).

(3) Where the instrument creating the trust was dated subsequently to the 27th August, 1860 (*x*), or, in the case of purchase or mortgage money, subsequently to the 12th August, 1859 (*y*), and the contrary was not expressly declared by the instrument creating the trust.

(*p*) 22 & 23 Vict. c. 35, ss. 14, 15, 17, 18; *Re Wilson, Pennington* v. *Payne*, 54 L. T. 600; 34 W. R. 512.
(*q*) 23 & 24 Vict. c. 145, s. 9.
(*r*) 45 & 46 Vict. c. 38, s. 64 (1).
(*s*) 51 & 52 Vict. c. 59, ss. 11, 12 (1); Trustee Act, 1893 (56 & 57 Vict. c 53), s. 19 (2), (3).
(*t*) 57 & 58 Vict. c. 30, ss. 8 (4), 9 (5).
(*u*) 7 & 8 Vict. c. 76, s. 10; 8 & 9 Vict. c. 106, s. 1.
(*x*) Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 29.
(*y*) Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 23.

(4) In certain cases in which the intention to cast upon persons paying money the duty to see to its application could not be reasonably inferred, *e.g.*, where the trust was for payment of debts generally (*z*). This exception did not, however, apply to trusts for payment of specified debts.

As will be seen from the above statement trustees of instruments creating trusts after the 12th August, 1859, could give good receipts for any purchase or mortgage money, unless a contrary intention was declared by the instrument creating the trust (*a*); and after the 27th August, 1860, trustees had somewhat more extensive powers of doing so (*b*); and now they can give a good receipt for money paid to them after the 31st December, 1882, irrespective of the date of the instrument creating the trust, such receipt exonerating the person paying from seeing to the application of the money (*c*). A purchaser need not therefore now inquire as to a receipt clause, or whether the property has become absolutely vested, so as to put an end to the efficacy of a receipt clause; but, nevertheless, inasmuch as on some titles questions may arise which depend upon the power of trustees, prior to the 1st January, 1882, the subject is still of some importance.

All the trustees must join in giving a receipt as well as in the conveyance, in order to exonerate the purchaser from seeing to the application of the purchase-money (*d*).

See AGENTS—SETTLED LAND—VESTING DECLARATIONS AND ORDERS—WILLS.

Requisitions.

1. *There does not appear to be any trust for sale in the indenture of , 19 . Unless an order of the Court for sale is obtained, all the debenture holders and the company must join in the conveyance.*

(*z*) *Elliot* v. *Merriman*, Barn. Ch. 78.
(*a*) Lord St. Leonards' Act (22 & 23 Vict. c. 35), s. 23.
(*b*) Lord Cranworth's Act (23 & 24 Vict. c. 145), ss. 29, 34.
(*c*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 36; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 20.
(*d*) *Boursot* v. *Savage*, L. R. 2 Eq. 134; 14 L. T. 299; 14 W. R. 565.

2. *It appears that an action for the execution of the trusts of the settlement is pending. Has the sanction of the Court to the proposed sale been obtained?*

3. *The share of C. B. under the will of A. B. having been settled on his marriage, the concurrence of the trustees of such settlement must be obtained. The settlement must also be abstracted in order to show that the trustees have power to sell or concur in a sale.*

4. *The trust for sale in the will of A. B., deceased, does not arise until the death of Mrs. B., the tenant for life. The vendors, therefore, cannot make a title; but the purchaser, although he is not bound to do so, is prepared to accept a title under the Settled Land Acts from the tenant for life on the necessary alterations in the abstract being made.*

5. *The consent in writing of the tenant for life to the proposed sale must be produced as required by sect.* 56 *of the Settled Land Act*, 1882.

6. *Having regard to sect.* 56 *of the Settled Land Act*, 1882, *requiring the consent of the tenant for life, the settlement effected by the* [*will of*] *must be more fully abstracted, and the abstract must show who is now tenant for life under such settlement, and his consent must be obtained.*

7. *It would appear that inasmuch as A. and B. are entitled for life in undivided shares, sect.* 6 *of the Settled Land Act*, 1884, *does not apply, and the consent of both A. and B. must be obtained* (*e*).

8. *A. B., the tenant for life, whose consent to the sale by the trustees is required by the settlement, has, it is understood, incumbered his life estate and been adjudicated a bankrupt. The consent of his trustee in bankruptcy and incumbrancer, as well as of A. B., must be obtained by the vendors' solicitors and produced.*

(*e*) *Re Osborne and Bright's, Ltd.*, [1902] 1 Ch. 335; 71 L. J. Ch. 285; 86 L. T. 178; 50 W. R. 468.

9. *The power of sale of the copyholds is given only to the trustees and the survivor of them. The purchaser cannot accept a title from the executor of such survivor.*

10. *Inasmuch as the premises contracted to be sold are now absolutely vested in possession in the children of A. B., deceased, the power of sale by the trustees is no longer exercisable, and all the beneficiaries must join in the conveyance.*

11. *The vendors appear to be trustees who have purchased in breach of trust. Who are their* cestuis que trust, *and are they all* sui juris? *If so, one at least of them must concur in the conveyance, and the purchaser must be satisfied that the purchase-money is duly reinvested.*

UNCONSCIONABLE BARGAIN.

See Expectant Heirs.

UNDERLEASE.

See Leasehold Property.

UNDERTAKING FOR SAFE CUSTODY.

See Title Deeds.

USES.

Before the Statute of Uses, where lands were given to any person to the use of another, the latter took an estate recognized by the Court of Chancery, and similar to a modern equitable estate, but took no estate at law. By

the Statute of Uses (*f*) it was enacted that where any person or persons should stand or be seised of any lands, tenements, or other hereditaments to the use, confidence, or trust of any other person or persons, such person or persons that have such use, confidence, or trust should stand and be seised and deemed to be in lawful seisin and possession of the same lands, tenements, and herditaments in the like estates as they have in the use, trust, or confidence.

The intention of the statute was to prevent the legal estate and the beneficial interest being in different persons, but this intention was defeated by the Court of Chancery, which held that the statute only executed the first use, or, as it was expressed, that there could not be "a use upon a use" (*g*), but recognized and enforced as an equitable estate or interest any use or trust limited or declared upon or out of the first use (*h*).

The statute enabled the legal estate to be dealt with in the way of creating future estates and otherwise in manner not permitted by the strict rules of the old common law, for by force of the statute, uses, as and when they arise or spring into being, become legal estates or interests.

The statute speaks of one person being seised to the use of another. When, therefore, the person seised to the use is the same person as the *cestui que use*, the conveyance operates under the common law and not under the statute, except, according to Lord Bacon (*i*), "there be a direct impossibility or impertinency for the use to take effect by the common law." "If the estate is changed the use is executed by the statute" (*j*).

In a grant to uses the statute cannot execute the use for any greater estate than that given to the grantee; if, there-

(*f*) 27 Hen. 8, c. 10.
(*g*) 2 Blackstone, 345; *Tyrell's Case*, Dyer, 155 a.
(*h*) *Cooper* v. *Kynock*, L. R. 7 Ch. 398; 41 L. J. Ch. 296; 26 L. T. 566; 20 W. R. 503.
(*i*) Reading upon the Statute of Uses, 2nd edit. p. 65.
(*j*) *Per* Grove, J., *Webster* v. *The Overseers of Ashton-under-Lyne; Orme's Case*, L. R. 8 C. P. 281, 289; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171.

fore, the estate given to the grantee to uses be smaller than that expressed to be limited to the *cestui que use*, the legal estate taken by the latter will be cut down accordingly (*k*). On the other hand, if the grantee to uses and the *cestui que use* are the same, and there is any discrepancy between the limitation in the *habendum* and that in the declaration of uses, the whole limitation may be looked at to ascertain the estate intended to be limited, and a specific limitation overrides and controls a general limitation (*l*).

The statute requires a person to be *seised* to the use of another. Uses declared out of a copyhold or leasehold interest are therefore not executed by the statute, but confer merely equitable interests.

Resulting Use.—If in a voluntary conveyance no use is declared, or the uses declared do not exhaust the estate given to the grantee, a use is implied and executed by the statute in favour of the person who conveys, and the whole estate, or the part as to which no use is declared, as the case may be, goes back or *results* to the person conveying.

Any consideration, however small, in a conveyance containing no declaration of uses is sufficient to prevent the use resulting, so it is quite immaterial in an ordinary conveyance for value whether the usual words " unto and to the use of " are used as " unto " or " to " are sufficient to pass the estate at common law.

But, even in a conveyance for value, where the uses declared or raised by implication from the nature of the transaction in favour of persons other than the grantor do not exhaust the estate granted, there will be a resulting use in favour of the grantor.

In a will, if property be devised to uses, the legal estate will follow the uses declared either by virtue of, or by analogy to, the Statute of Uses, but the strict application of the principles applicable to a grant to uses may be relaxed in favour of a construction which will give effect to

(*k*) *Jenkins* v. *Young*, Cro. Cas. 230; *Orme's Case*, L. R. 8 C. P. 281, 292; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171.

(*l*) *Orme's Case*, L. R. 8 C. P. at p. 300; 42 L. J. C. P. 38; 27 L. T. 652; 21 W. R. 171.

what appears by the will to be the intention of the testator (*l*).

Requisition.

The voluntary conveyance of , 19 , under which the vendor shows title, does not properly declare the use of the premises conveyed. There appears, therefore, to have been a resulting use in favour of the settlor, who, or whose representative, must join in the conveyance.

VENDOR AND PURCHASER—BANKRUPTCY OR DEATH OF, BEFORE COMPLETION.

A contract for sale of real property is not discharged by the bankruptcy of either vendor or purchaser. Where the vendor becomes bankrupt the purchaser may tender the purchase-money and require the trustee to complete the contract and, on the other hand, the trustee in the vendor's bankruptcy can compel the purchaser to pay the purchase-money and take a conveyance of the estate.

Where the vendor becomes bankrupt, the trustee in bankruptcy cannot, if the property be leasehold, disclaim the contract without disclaiming the lease (*m*).

The Bankruptcy Act, 1883 (*n*), and the Bankruptcy Act, 1914 (*o*), while protecting contracts made without notice of the act of bankruptcy, do not afford protection to any conveyance or assignment made thereafter with

(*l*) *Cunliffe* v. *Brancker*, 3 Ch. D. 393; 46 L. J. Ch. 128; 35 L. T. 578; *Cooper* v. *Kynock*, L. R. 7 Ch. 398; 41 L. J. Ch. 296; 26 L. T. 566; 20 W. R. 503.

(*m*) *Pearce* v. *Bastable's Trustee in Bankruptcy*, [1901] 2 Ch. 122; 70 L. J. Ch. 446; 84 L. T. 525; 8 Manson, 287; *Re Bastable*, [1901] 2 K. B. 518; 70 L. J. K. B. 784; 84 L. T. 825; 49 W. R. 561; 8 Manson, 239.

(*n*) 46 & 47 Vict. c. 52.

(*o*) 4 & 5 Geo. 5, c. 59.

such notice. If, therefore, a vendor commits an act of bankruptcy before completion, the purchaser cannot safely pay the purchase-money to him, as in case of his subsequent adjudication in respect of such act of bankruptcy, the trustee could claim it again from the purchaser on the ground that the payment to the vendor was made after notice of an act of bankruptcy (*p*). But where it is provided in the contract or conditions of sale that on failure of the vendor to complete, the deposit shall be returned, the purchaser can recover such deposit (*p*).

If the purchaser becomes bankrupt, specific performance will not be decreed against his trustee (*q*), and if the trustee in the purchaser's bankruptcy does not disclaim, the vendor has a lien on the estate for the unpaid purchase-money, and may value his security and prove for the deficiency (if any) in the purchaser's bankruptcy, while the trustee in the purchaser's bankruptcy can compel a conveyance on payment of the purchase-money in full.

The death of the vendor or purchaser before the conveyance or surrender, or even before the time agreed upon for completing the contract, is immaterial. If the vendor dies before payment of the purchase-money, the right to it devolves upon his executors, and the purchase-money forms part of his personal estate (*r*). But before the 1st January, 1881, the concurrence of the heir-at-law or devisee of the vendor was necessary to convey the legal estate. Where, however, the vendor dies on or after that date, and there is a subsisting contract enforceable against his heir or devisee for the sale of any freehold estate or interest, his personal representative has power to convey the land for all the estate and interest which was vested in the vendor (*s*).

On the death before completion of the purchaser his heir-at-law or devisee becomes equitably entitled, and formerly, on the death of the purchaser of land in fee before com-

(*p*) *Powell* v. *Marshall, Parkes & Co.*, [1899] 1 Q. B. 710; 68 L. J. Q. B. 477; 80 L. T. 509; 47 W. R. 419.
(*q*) *Holloway* v. *York*, 25 W. R. 627.
(*r*) Sug. 177.
(*s*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 4.

pletion, the heir-at-law or devisee, as the case might be, was *primâ facie* entitled to insist upon the payment of the purchase-money out of the personal estate, but, by Locke King's Amendment Act (*t*), in the absence of any contrary intention signified by will, deed, or other document, lands of testators dying after the 31st December, 1854, and by the further Amendment Act (*u*) of intestates dying after the 31st December, 1877, are taken subject to any lien for unpaid purchase-money. The last-mentioned statute extended the rule to leasehold estates.

On the sale of a life estate the loss occasioned by the death of the *cestui que vie* after the date of contract must be borne by the purchaser (*x*).

See TRUST ESTATES, DEVOLUTION OF, UPON DEATH OF TRUSTEE.

Requisitions.

1. *It is understood that the vendor has become bankrupt since the date of the contract; the concurrence of the trustee in bankruptcy must be obtained.*

2. *The vendor having died since the date of the contract, a further abstract must be delivered showing who are his legal personal representatives.*

VENDOR AND PURCHASER SUMMONS.

A comparatively inexpensive and expeditious method of obtaining the decision of a judge in chambers on questions arising in the investigation of title is provided by the Vendor and Purchaser Act, 1874 (*y*), under which a vendor or purchaser of real or leasehold estate in England or their representatives may apply by originating summons to a judge of the Chancery Division for the decision of any

(*t*) Real Estate Charges Act, 1867 (30 & 31 Vict. c. 69), s 2
(*u*) Real Estate Charges Act, 1877 (40 & 41 Vict. c. 34).
(*x*) Sug. 296.
(*y*) 37 & 38 Vict. c. 78, s. 9.

point on the requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, not being a question affecting its existence or validity.

The object of the section is to enable either a vendor or a purchaser to raise and have decided in a summary way some of the questions which formerly occurred in actions for specific performance, often long postponed in hearing, and perhaps only finally decided on further consideration. The questions thus raised should be distinct, isolated points, and not the general question whether a vendor has a good title (*z*).

Points proper to be decided upon a vendor and purchaser summons are such questions as of construction of a contract or conditions of sale (*a*), or of the documents abstracted, short points of law arising upon the abstract (*b*), the sufficiency or otherwise of answers to requisitions (*c*), the incidence of expenses (*d*), and the insertion or omission of particular clauses from the conveyance (*e*). But questions of fact cannot be so decided (*f*). The judge is to make such order upon the application as may appear to him to be just, and order how and by whom all or any of the costs of the application are to be borne and paid. He may in particular order rescission of the contract (*g*) and a return of the purchaser's deposit with interest (*h*), and that even on a summons by the vendor (*g*), and may give the purchaser his costs of investigating the title (*h*).

(*z*) *Re Wallis and Barnard's Contract*, [1899] 2 Ch. 515, at p. 519; 68 L. J. Ch. 753; 81 L. T. 382; 48 W. R. 57.

(*a*) *Re Beyfus and Masters's Contract*, 39 Ch. D. 110; 59 L. T. 740; 37 W. R. 261; 53 J. P. 293.

(*b*) *Re Brown and Sibly's Contract*, 3 Ch. D. 156.

(*c*) *Re Burroughes*, 5 Ch. D. 601; 46 L. J. Ch. 528; 36 L. T. (N. S.) 778; 25 W. R. 520.

(*d*) *Re Moody and Yates*, 28 Ch. D. 661; 30 Ch. D. 344; 54 L. J. Ch. 886; 53 L. T. 845; 33 W. R. 785.

(*e*) *Re Peck and London School Board*, [1893] 2 Ch. 315; 62 L. J. Ch. 598; 68 L. T. 847; 41 W. R. 388; 3 R. 511.

(*f*) *Re Popple and Barratt*, 25 W. R. 248.

(*g*) *Re Walker and Oakshott's Contract*, [1901] 2 Ch. 383; 70 L. J. Ch. 666; 84 L. T. 809; 50 W. R. 41.

(*h*) *Re Hargreaves and Thompson's Contract*, 32 Ch. D. 454; 55 L. T. 239; 34 W. R. 708.

An order under the Vendor and Purchaser Act, being an order in the matter and not in an action, can only be appealed against within fourteen days (*i*).

Applications under this section are frequently necessary on investigation of title, and some forms which it is hoped may prove useful are given in Appendix F. p. 487.

VERIFICATION OF ABSTRACT.

Certain expenses in connection with the investigation of title, which apart from special contract were formerly borne by the vendor, are now, in the absence of special stipulation, cast on the purchasers. These are the expenses of—

(1) The furnishing of such covenants for production as the purchaser can and shall require. But the vendor bears the expense of perusal and execution by himself and by necessary parties other than the purchaser (*j*). This now applies to acknowledgments and undertakings under the Conveyancing Act, 1881.

(2) The production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of Court, Court rolls, deeds, wills, probates, letters of administration, and other documents not in the vendor's posession (*k*).

(3) Journeys incidental to such productions and inspections (*k*).

(4) Searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and copies or abstracts of, or extracts from, the documents mentioned in (2) (*k*).

(*i*) Ord. LVIII. rr. 9 and 15; *Re Blyth and Young*, 13 Ch. D. 416; 41 L. T. 746; 28 W. R. 266.
(*j*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, r. 4.
(*k*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 3 (6).

(5) Making copies of any documents retained by the vendor (*l*).

The provisions of the Conveyancing Act referred to above do not enable a vendor to cast upon the purchaser the expense of procuring and making an abstract of any deed not in the vendor's possession which forms part of a 40 years' title, or such other title as, by contract, he is bound to show, and the vendor must, at his own expense, furnish such abstract (*m*).

VESTING.

The term "vest" is used in several different senses :—

(i) As applied to legal estates in land, "vesting" signifies the acquisition of an actual estate in the land whether in possession or in remainder.

(ii) As applied to future interests other than legal remainders, the word "vested" signifies not subject to a condition precedent. The rules for determining what is and what is not a condition precedent differ according as the subject-matter of the gift is real estate, money charged on land, or personal estate. They are contained in a large number of cases which are collected in Theobald on Wills. When such a future interest is subject to a condition subsequent instead of precedent it is said to be vested subject to be divested.

(iii) "Vested" is, again, sometimes used as an equivalent for transmissible on death.

To determine whether or not shares or legacies are vested in the last sense is not infrequently of importance in the case of gifts by will to a class; the rules may shortly be stated as follows :—

(1) In the case of an immediate devise or bequest to a class, those *in esse* at the death of the testator are

(*l*) Conveyancing Act, 1881, s. 3 (6).

(*m*) *Re Johnson and Tustin*, 30 Ch. D. 42; 54 L. J. Ch. 889; 53 L. T. 281; 33 W. R. 737.

entitled, and members of the class coming into existence after his death are excluded (*o*). If none of the class are *in esse* at the death of the testator all subsequently born are (subject to the rule against perpetuities) entitled.

(2) In the case of a reversionary devise or bequest to a class, those *in esse* at the death of the testator take vested interests, but such interests are liable to be divested to such an extent as may be necessary to let in all members of the class who come into existence after the death of the testator and before the period of distribution (*p*).

(3) Where there is a devise or bequest to a class and the share of each member of the class is made to vest or become payable when a specified event happens, the period of distribution is when the first member of the class becomes entitled to his share, and members of the class coming into existence after that period are excluded (*q*).

A devise or bequest to persons born at a given period includes a person *en ventre sa mère* at that period and born afterwards (*r*).

Requisitions.

1. *The interest under his father's will offered as security by the mortgagor does not vest until he attains* 25, *when it is also payable. The security will not, therefore, be accepted unless accompanied by a policy of assurance, in an office to be approved by the mortgagee, against the death of the mortgagor before the date referred to.*

2. *Under the devise by the testator to his brother and sisters of his interest in Blackacre expectant on*

(*o*) *Singleton* v. *Gilbert*, 1 Cox, 68; 1 B. C. C. 542; *Viner* v. *Francis*, 2 R. R. 29; 2 Cox, 190.

(*p*) *Devisine* v. *Mello*, 1 B. C. C. 537; *Browne* v. *Hammond*, Johns. 210, at p. 212, n. (*a*).

(*q*) *Whitbread* v. *Lord St. John*, 10 Ves. jun. 152; 7 R. R. 366.

(*r*) *Trower* v. *Butts*, 1 L. J. (O. S.) Ch. 115; 24 R. R. 164; 1 Sim. & St. 181.

the death of his father, the brothers and sisters of the testator who came into existence subsequently to his death, but before the death of his father, are entitled to shares. The abstract should therefore show whether or not there were any such brothers or sisters of the testator (*s*).

VESTING DECLARATIONS AND ORDERS.

In a deed executed after the 31st December, 1881, appointing a new trustee of a settlement of whatever date, a declaration by the appointor to the effect that any estate or interest (other than the legal estate or interest in copyhold or customary land, or land conveyed by way of mortgage) in any land subject to the trust shall vest in the new trustees, vests such estate or interest without any conveyance, in such new trustees as joint tenants. And where a deed by which a retiring trustee is discharged contains such a declaration by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees, such declaration vests the estate or interest without conveyance in the continuing trustees alone, as joint tenants (*t*).

A vesting order may be made by the High Court—

(1) Where the Court appoints or has appointed a new trustee (*u*).

(2) Where a trustee either solely or jointly entitled to or possessed of any land is (a) an infant, or (b) out of the jurisdiction, or (c) cannot be found (*x*).

(3) Where it was uncertain who was the survivor of two

(*s*) See *Walker* v. *Shore*, 15 Ves. jun. 122, at p. 125; 10 R. R. 41.

(*t*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 34; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12.

(*u*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 34; Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 8; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 147; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (i).

(*x*) Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 7—12; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (ii).

or more trustees jointly entitled to or possessed of any land (*y*).

(4) Where as to the last trustee known to have been entitled to or possessed of any land it is uncertain whether he is living or dead (*z*).

(5) Where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead (*a*).

(6) Where a trustee refuses to convey or release, or neglects to do so for 28 days after being required by a person entitled (*b*).

(7) Where unborn persons have a contingent right to land which they would hold upon any trust (*c*).

(8) Where a mortgagee of land is an infant (*d*).

(9) Where a mortgagee of land has died without having entered into possession, and the mortgage money has been paid to the person entitled, or he consents, then the Court may make a vesting order in the following cases :—

(i) Where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction or cannot be found.

(ii) Where an heir or personal representative or devisee of the mortgagee on demand made by a person entitled has stated in writing that he will not convey or does not convey the same for 28 days next after a proper deed for conveying the

(*y*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 13; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (iii).

(*z*) Trustee Act, 1850, (13 & 14 Vict. c. 60), s. 14; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (iv).

(*a*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 15; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30 (1); Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (v).

(*b*) Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 2; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 26 (vi).

(*c*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 16; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 27.

(*d*) Trustee Act, 1850 (13 & 14 Vict. c. 60), ss. 7, 8; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 28.

land has been tendered to him by the person so entitled.

(iii) Where it is uncertain which of several devisees of the mortgagee was the survivor.

(iv) Where it is uncertain as to the survivor of several devisees of the mortgagee or as to the heir or personal representative of the mortgagee, whether he is living or dead.

(v) Where there is no heir or personal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee (*e*).

(10) Where a judgment is given or order made for sale or mortgage of land, and the person entitled is a party to the action in which the order is made, or is otherwise bound by the judgment or order (*f*).

(11) Where a judgment is given for specific performance of a contract concerning land, or for partition, or sale in lieu of partition, or exchange, or generally where any judgment is given for the conveyance of any land (*g*).

In all cases where a vesting order can be made, the Court may instead appoint a person to convey (*h*).

Where an order is made vesting copyholds with the consent of the lord of the manor, the land vests without surrender or admittance (*i*); and where an order is made appointing a person to convey copyholds, the lord of the manor, subject to the customs and usual payments, is

(*e*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30 (1); Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 19; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 29.

(*f*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 29; Trustee Act, 1852 (15 & 16 Vict. c. 55), s. 1; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 30; Trustee Act, 1894 (57 & 58 Vict. c. 10), s. 1. As to the practice of the Court as to binding absent parties, see *May* v. *Newton*, 34 Ch. D. 347; 56 L. J. Ch. 313; 56 L. T. 140; 35 W. R. 363.

(*g*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 30; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 31.

(*h*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 20; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 33.

(*i*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 28; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 34 (1).

bound to complete the assurance as if the person in whose place an appointment is made were free from disability and had himself executed and done the requisite assurances and things (*k*).

All equitable interests of persons parties to the action or bound by the order for sale of properties sold under the Court are bound by such order; no vesting order of such interests is, therefore, necessary or proper (*l*); nor of course is it necessary for such persons to join in the conveyance, and a purchaser cannot insist on their concurrence even at his own expense (*m*).

An order of the Court is not now invalidated as against a purchaser on the ground of want of jurisdiction, or of concurrence, consent, notice or service, whether the purchaser has notice of any such want or not (*n*).

Vesting orders relating to property in Middlesex and Yorkshire require registration as conveyances (*o*).

See ACTION—ORDER—TRUSTEES, SALES AND MORTGAGES BY.

Requisitions.

1. *As the property of which C. D. was appointed a new trustee by the indenture of , 19 , comprised [the mortgaged land now proposed to be dealt with or copyhold land], sect. 12 of the Trustee Act, 1893, does not apply, and the declaration does not vest the property in C. D.: The premises must therefore be conveyed to him in the usual way before he can make a title.*

2. *Under what circumstances is it proposed to apply for the vesting order mentioned in condition No. ?*

(*k*) Trustee Act, 1850 (13 & 14 Vict. c. 60), s. 28; Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 34 (2).
(*l*) *Re Williams' Estate*, 21 L. J. Ch. 437; 5 De G. & S. 515.
(*m*) *Webber* v. *Jones*, 6 Ir. Eq. R. 142; *Cole* v. *Sewell*, 17 Sim. 40.
(*n*) Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 70; *Re Hall-Dare's Contract*, 21 Ch. D. 41; 51 L. J. Ch. 671; 46 L. T. 755; 30 W. R. 556. *Sed vide ante*, p. 300.
(*o*) Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 12.

The vendor's solicitor should show that the circumstances are such as bring the case within one of the sections of the Trustee Act, 1893.

VOLUNTARY CONVEYANCES.

See SETTLEMENTS.

WAIVER.

See LEASEHOLD PROPERTY.

WIFE.

See MARRIED WOMEN.

WILLS.

The subject of wills as affecting the investigation of title may be divided as follows :—

(i) As to the validity of the will.
(ii) As to what passes under it.
(iii) As to the estate taken.
(iv) As to what constitutes a charge on real estate of debts, legacies, and annuities.
(v) As to other matters relating to wills.

(i) As to the Validity of the Will.

A will of immovable property (including leaseholds (*p*)) must in general be executed in accordance with the *lex situs*, and a will of movable property in accordance with the *lex domicilii*; but a will of personalty made out of the United

(*p*) *Pepin* v. *Bruyère*, [1902] 1 Ch. 24; 71 L. J. Ch. 39; 85 L. T. 461; 50 W. R. 34.

Kingdom by a British subject dying after the 5th August, 1861, whatever his domicil, is well executed for the purpose of being admitted to probate if made according to the forms required by the law of the place where it was made, or of the place of domicil of the testator at the time when it was made, or of the place of domicil of origin of the testator (*q*); and every will of personalty (including leaseholds) made in the United Kingdom by a British subject dying after that date is well executed if executed according to the forms required by the law of that part of the United Kingdom where the will was made (*r*).

In order, therefore, that a will executed after the 31st December, 1837, may effectually dispose of land of any tenure in England or Wales, it must, unless it be a will of leaseholds executed by a British subject dying after the 5th August, 1861, or the will of a soldier in actual military service or a marine or seaman at sea, be executed in accordance with the requirements of the Wills Act, 1837 (*s*), viz. : (1) It must be in writing signed by the testator, or by some other person in his presence and by his direction; (2) the signature must be at the foot or end of the will as explained by the Wills Act Amendment Act, 1852 (*t*); (3) the signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses must attest and subscribe the will in the presence of the testator. No special form of attestation is necessary. A closed will with the attestation on the cover will satisfy the Act (*u*). Soldiers in actual military service (*x*), and marines or seamen at sea (*y*), although infants (*z*), may dispose of personal

(*q*) Wills Act, 1861 (24 & 25 Vict. c. 114), s. 1.
(*r*) *Ibid.* s. 2.
(*s*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 9.
(*t*) 15 & 16 Vict. c. 24.
(*u*) *Hunter* v. *Nicholls*, [1921] 2 Ch. 11; 125 L. T. 55; 65 S. J. 533.
(*x*) *Re Phipps*, 2 Curt. 368; *Drummond* v. *Parish*, 3 Curt. 522; *White* v. *Rapton*, 3 Curt. 818; *Re Hill*, 1 Rob. E. 276; *Herbert* v. *Herbert*, Deane, Ecc. Ca. 10.
(*y*) *In the goods of Saunders*, L. R. 1 P. & D. 16; 35 L. J. P. & M. 26; 13 L. T. 411; 14 W. R. 148; *Re Hayes*, 2 Cur. 338.
(*z*) *Re Wernher; Wernher* v. *Beit*, [1918] 2 Ch. 82; 87 L. J. Ch. 372; 118 L. T. 388; 62 S. J. 503.

estate other than wages and other money payable by the Admiralty (*a*), as they might before the Wills Act (*b*), that is to say, by unattested writing or by word of mouth, and by such a will may exercise any general power of appointment over personal estate (*z*). The power now extends to members of the naval or marine forces in actual service and also to testamentary dispositions of real estate by soldiers and sailors in actual service and marines and seamen at sea (*c*).

Wills executed before the 1st January, 1838, in order to pass an estate in fee simple or *pur autre vie* in real property, had to be in writing and signed by the testator in the presence of three or four credible witnesses (*d*). No witnesses, nor even writing, were necessary in the case of copyhold or leasehold or other personal estate; but by the Statute of Frauds nuncupative wills of property of over 30*l.* value were required to be proved by three witnesses (*e*), and were subject to various other restrictions which are not now of sufficient practical importance in the investigation of title to necessitate their being set out here.

Since the Wills Act an infant, other than a soldier or sailor in actual service or a marine or seaman at sea, has not been able to make a will either of realty or personalty (*f*); before that statute an infant could dispose of personal but not of real estate (*g*).

Prior to the Married Women's Property Act, 1882, a married woman could—

(1) Make a will of property to which she was entitled for her separate use.

(2) Make a will of personal property with the consent of her husband; such consent, however, could be revoked at any time before probate.

(*z*) *Re Wernher; Wernher* v. *Beit*, [1918] 2 Ch. 82; 87 L. J. Ch. 372; 118 L. T. 388; 62 S. J. 503.
(*a*) 28 & 29 Vict. c. 72, s. 5.
(*b*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 11.
(*c*) The Wills (Soldiers and Sailors) Act, 1918 (7 & 8 Geo. 5, c. 58).
(*d*) The Statute of Frauds (29 Car. 2, c. 3), ss. 5, 12.
(*e*) 29 Car. 2, c. 3, s. 19.
(*f*) 7 Will. 4 & 1 Vict. c. 26, s. 7.
(*g*) 2 Black. Com. 497.

(3) When an executrix, make a will appointing an executor for the purpose of continuing the representation of her testator.

(4) Execute by will a power over real or personal property.

(5) Make a will as a *feme sole* after a decree of judicial separation, or the making of a protection order under the Matrimonial Causes Act, 1857 (*h*).

(6) Make a will as a *feme sole* where she was the wife of an alien enemy, a transported convict, an attainted person, or a person banished for life by Act of Parliament.

Under the Married Women's Property Act, 1882, a woman married on or after the 1st January, 1883, can dispose by will of any real or personal property which belongs to her at the time of marriage, or is acquired by or devolves upon her after marriage (*i*); and every woman married before the commencement of the Act can dispose by will of all real and personal property, her title to which has accrued on or after the 1st of January, 1883 (*k*). The Act gave a married woman power to dispose by will of property only of which she was seised or possessed while under coverture; consequently, it was held that her will made during coverture was not, unless it was re-executed after she became discovert, effectual to dispose of property which she acquired after the coverture had come to an end (*l*); but now the will of a married woman who dies on or after the 5th December, 1893, made during coverture, is valid whether she is or is not entitled to any separate property at the time of making it, and such will does not require to be re-executed or republished after the death of her husband (*m*).

(*h*) 20 & 21 Vict. c. 85, s. 21.
(*i*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 2.
(*k*) *Ibid.* s. 5.
(*l*) *Re Price, Stafford* v. *Stafford*, 28 Ch. D. 709; 54 L. J. Ch. 509; 52 L. T. 430; 33 W. R. 520.
(*m*) Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 3; *Re Wylie, Wylie* v. *Moffat*, [1895] 2 Ch. 116; 64 L. J. Ch. 613; 43 W. R. 475; 13 R. 483.

Persons are unable to make wills while of unsound mind. The question whether or not a person is of unsound mind is a question of fact, and it seems that there is no presumption that a testator is sane until the contrary is proved (*n*).

By common law an alien could not hold any estate or interest in land, and therefore could not make a valid will of such estate; but since the 6th August, 1844, he has been able to hold land for a lease not exceeding 21 years for the purpose of occupation or business (*o*), and from and since the 12th May, 1870, an alien can hold and dispose of real estate in all respects as a natural-born subject (*p*).

Neither traitors, felons, convicts, nor suicides are under any incapacity to make wills, nor do they ever appear to have been so, although formerly attainder of high treason or felony was a ground of forfeiture or escheat.

A will made or republished since the Wills Act came into operation (*q*) is revoked—

(1) By marriage, except it be a will made in exercise of a power of appointment, where the real or personal estate appointed would not, in default of appointment, pass to the testator's heir, customary heir, executor or administrator, or next of kin under the Statute of Distributions (*r*). This applies to a soldier's or sailor's will (*s*).

(2) By a subsequent will or codicil. If, however, a subsequent testamentary paper is only partly inconsistent with one of an earlier date, the latter instrument is only revoked as to those parts which are inconsistent, and both of the papers are entitled to probate (*t*).

(*n*) *Sutton* v. *Sadler*, 26 L. J. C. P. 284; 5 W. R. 880; 3 C. B. (N. S.) 87; *Cleare* v. *Cleare*, L. R. 1 P. & D. 655; 38 L. J. P. 81; 20 L. T. 497; 17 W. R. 687.

(*o*) 7 & 8 Vict. c. 66.

(*p*) The Naturalization Act, 1870 (33 & 34 Vict. c. 14).

(*q*) January 1st, 1838.

(*r*) The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 18.

(*s*) *Re Wardrop*, [1917] P. 54; 86 L. J. P. 37; 115 L. T. 720; 61 S. J. 171.

(*t*) *Lemage* v. *Goodban*, L. R. 1 P. & D. 57; 35 L. J. P. & M. 28; 13 L. T. 508; 12 Jur. (N. S.) 32.

(3) By writing, declaring an intention to revoke the same and executed as a will.

(4) By burning, tearing, or otherwise destroying with the intention of revoking the same (either by the testator personally or by someone in his presence by his direction) (*u*).

No acts other than these are effectual to revoke an ordinary will (*x*), but a soldier's or sailor's will can be informally revoked (*y*).

(ii) As to what passes.

All real and presonal estate which a testator is entitled to at the time of his death may be disposed of by a will made or republished on or after the 1st January, 1838; and this power extends to copyhold and customary property, notwithstanding that it may not have been surrendered to the use of the will, and notwithstanding that the testator may not have been admitted, and notwithstanding the want of a custom enabling a tenant to dispose of the property by will (*z*). Contingent, executory, and other future interests in real or personal estate, and all rights of entry for conditions broken, and other rights of entry, can also be so disposed of (*z*). A will made since the date referred to *primâ facie* speaks from the date of the testator's death (*a*); and a general devise or bequest in such a will includes property over which the testator has a general power of appointment exercisable by will (*b*), and is effectual to execute a general power, even though the will was made before the power was created (*c*).

A general devise of real estate or lands includes copyholds not surrendered to the use of the will of a testator

(*u*) The Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 20.
(*x*) *Ibid.* The law as to revocation before the Wills Act will be found in 6 Cruise, Title 38, chap. vi.; Burton on Real Property, s. 261; and 2 Black. Com. 376.
(*y*) *Re Gossage, Wood* v. *Gossage*, [1921] P. 194; 90 L. J. P. 201; 124 L. T. 770; 65 S. J. 274.
(*z*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 3.
(*a*) *Ibid.* s. 24.
(*b*) *Ibid.* s. 27.
(*c*) *Stillman* v. *Weedon*, 18 L. J. Ch. 46; 12 Jur. 992; 16 Sim. 26.

dying after the 11th July, 1815 (*d*); and a devise in a will made or republished after the 31st December, 1837, of the lands of the testator or other general devise includes copyholds and leaseholds, unless a contrary intention appears (*e*).

A devise of lands, real estate, or other similar expression includes a reversionary interest in such estates (*f*). A general devise of lands includes land contracted to be purchased (*g*), but not the purchase-money of lands contracted to be sold (*h*).

In general, the death of a devisee or a legatee in the lifetime of the testator causes a lapse of the devise or bequest; but a devise by will, made or republished after the 31st December, 1837, of real estate for an estate tail to persons dying in the lifetime of the testator leaving issue living at the time of the death of the testator inheritable under such entail does not lapse (*i*) nor is there a lapse where a child or other issue, to whom any estate or interest in real or personal estate not determinable at or before his or her death is given, dies in the lifetime of the testator leaving children or other issue living at the time of the death of the testator (*k*); but where there is a gift by a testator to children as a class, the rule is that those members of the class who are, at his death, capable of taking, take the whole, notwithstanding that some children may have died in the lifetime of the testator leaving issue who survive him, the gift being construed as showing an intention on the part of the testator that the class shall take so far as the law allows (*l*).

The Wills Act made beneficial gifts to attesting witnesses, their wives or husbands, void, but provided that such

(*d*) 55 Geo. 3, c. 192, s. 1.
(*e*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 26.
(*f*) *Church* v. *Mundy*, 15 Ves. jun. 396; *Ford* v. *Ford*, 6 Ha. 486.
(*g*) *Acherley* v. *Vernon*, 3 Bro. P. C. 85; Com. 381; 9 Mod. 68; 10 Mod. 518; 1 P. W. 783; 2 Eq. Abr. 209.
(*h*) *Knollys* v. *Shepherd*, 1 J. & W. 499.
(*i*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 32.
(*k*) *Ibid.* s. 33.
(*l*) *Re Coleman and Jarrom*, 4 Ch. D. 165; 46 L. J. Ch. 33; 35 L. T. 614; 25 W. R. 137.

persons (*m*), and creditors (*n*) and executors (*o*), should be good witnesses.

A residuary devise by will made or republished after the 31st December, 1837, includes estates comprised in lapsed and void devises (*p*). Both in wills made before and after the coming into operation of the Wills Act, a general bequest carries lapsed and void bequests.

As to wills executed before the 1st January, 1838, and not afterwards republished. For many years prior to the passing of the Wills Act it had, in manner stated (*ante*, p. 442), been possible to dispose by will of estates in fee simple (*q*), estates *pur autre vie* (*r*), and copyhold estates by custom, the latter in cases of persons dying on or after the 12th July, 1815, without a previous surrender to the use of the will (*s*). Leaseholds and other personal estate could be disposed of at common law (*t*).

Every devise of freeholds in a will made prior to the 1st January, 1838, spoke from the date of the will, and could not, therefore, pass any property answering to the description but acquired by the testator after its execution; but a codicil was held *primâ facie* to have the effect of republishing the will so as to make it speak from the date of the codicil, and include lands acquired after the date of the will and before the date of the codicil (*u*). A bequest of leaseholds by will was held *primâ facie* to speak as from the date of the will, but it depended upon the context of the whole will whether that general doctrine was to be applied or not (*x*).

(*m*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 15.
(*n*) *Ibid.* s. 16.
(*o*) *Ibid.* s. 17.
(*p*) *Ibid.* s. 25.
(*q*) Statute of Wills (32 Hen. 8, c. 1); 34 & 35 Hen. 8, c. 5.
(*r*) Statute of Frauds (29 Car. 2, c. 3), s. 12.
(*s*) 55 Geo. 3, c. 192.
(*t*) 2 Black. 491.
(*u*) *Acherley* v. *Vernon*, 3 Bro. P. C. 85; Com. 381; 9 Mod. 68; 10 Mod. 518; 1 P. W. 783; 2 Eq. Abr. 209; *Goodtitle* v. *Meredith*, 2 M. & Sel. 5.
(*x*) *James* v. *Dean*, 15 Ves. jun. 236; 8 R. R. 178.

(iii) As to the estate taken.

A devise in wills made or republished after the 31st December, 1837, of any real estate without words of limitation passes the fee simple or other the whole estate or interest which the testator had power to dispose of unless a contrary intention appears (*y*); but this applies to the devise of an existing estate or interest, and not to an estate or interest which the testator by his will creates *de novo* (*z*). The law as to wills executed prior to the Wills Act, 1837, with regard to the estate taken is daily becoming of less importance for practical purposes connected with the investigation of title; the cases will be found collected in Jarman's Treatise on Wills.

Where there is a devise of real estate to trustees, the question not infrequently arises whether they take the legal estate in the property devised, or whether they merely serve as conduit-pipes to vest the estate in the person beneficially entitled. The rule on the subject before the Wills Act was, that if the trustees had any active duties to perform, such as to pay taxes or other outgoings, or to do repairs (*a*), or to pay the rent and profits to a beneficiary (*b*), they took so much of the legal estate as was necessary to enable them to carry out their duties (*c*); therefore if the devise was to trustees in trust to pay the rents and profits to A. for life, or in trust to permit A. to receive the *net* rents and profits, and after his decease in trust for B., the trustees took the legal estate, but only during the life of A., and the estate taken by B. was a legal estate in remainder. If, however, the property was given to the trustees merely, to the use of or in trust for the person beneficially entitled, or upon trust to permit such person to receive the rents and profits, or in trust to pay or permit the beneficiary to receive the rents

(*y*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 28.
(*z*) *Nichols* v. *Hawkes*, 22 L. J. Ch. 255; 10 Ha. 342.
(*a*) *Shapland* v. *Smith*, 1 B. C. C. 75.
(*b*) *Barker* v. *Greenwood*, 4 M. & W. 421.
(*c*) *Doe* d. *Player* v. *Nicholls*, 1 B. & C. 336; 1 L. J. (O. S.) K. B. 124; 25 R. R. 398; 2 Dowl. & Ry. 480.

and profits, the whole legal estate was vested in the beneficiary (*d*).

The rule referred to above has been greatly modified as regards wills executed or republished on or after the 1st January, 1838, and where real estate is devised to trustees or executors they now take the whole estate of the testator, unless they are given, expressly or by implication, a definite term of years, absolute or determinable, or an estate of freehold (*e*); and where real estate is devised to trustees without an express limitation of the estate to be taken, they take the whole estate of the testator, unless a beneficial interest in such real estate, or in its surplus rents and profits, be given to a person for life, and the purposes of the trust cannot continue beyond the life of such person (*f*).

It will be noticed that such a case as where real estate is devised to trustees and their heirs in trust to pay the rents and profits to A. for life, and after his death in trust for B., is not affected by either of the sections of the Wills Act containing the provisions referred to above, and the legal estate in such a case still vests in B. after the death of A.; and again, if the devise be to trustees and their heirs upon trust to apply the rents and profits for A.'s maintenance during his minority, and when he attains the age of 21 in trust for A. for life, with remainders over, the legal estate vests in A. on his attaining 21, as the trustees are given by implication a definite term of years, and the beneficial interest is given to him for life, and the purposes of the trust cannot continue longer.

(iv) As to what constitutes a Charge on Real Estate of Debts, Legacies, and Annuities.

A charge of debts may not only be expressed but also implied; thus, a general direction by a testator that his debts shall be paid charges them on the real estate (*g*); but

(*d*) *Barker* v. *Greenwood*, 4 M. & W. 421; *Doe* d. *Leicester* v. *Biggs*, 11 R. R. 533; 2 Taunt. 109.
(*e*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 30.
(*f*) *Ibid.* s. 31.
(*g*) *Graves* v. *Graves*, 8 Sim 43.

not where after such general direction the testator has specified a particular fund for the purposes (*h*), nor where the direction is that the debts are to be paid by the executors (*i*) unless they are devisees of the real estate. If they are such devisees, there is a charge on the real estate devised to them (*k*).

Legacies (which term includes annuities) are not payable out of real estate unless the testator has by his will charged his real estate with their payment. Such a charge may arise by implication in the absence of an express charge, as where legacies are given and followed by a gift of the residue of the testator's real and personal estate in one mass (*l*), the testator's real estate is charged with the payment of legacies, although there be a specific devise of real estate intervening between the gift of the legacies and the residuary devise (*m*). A charge of legacies on the real estate, or even on all the real estate, is not sufficient to charge lands specifically devised (*n*); but if the charge be of debts and legacies, the legacies, as well as the debts, are a charge on such land (*o*). A direction that real estate shall be sold and the proceeds form part of the residuary personal estate, charges the real estate with the debts and legacies (*p*).

(v) As to other Matters relating to Wills.

No obliteration, interlineation, or other alteration made in any will after its execution is valid unless executed in manner required for a will (*q*). The Court will accept any

(*h*) *Thomas* v. *Britnell*, 2 Ves. Sen. 313.
(*i*) *Cook* v. *Dawson*, 30 L. J. Ch. 359; 4 L. T. 326; 9 W. R. 434; 3 De G. F. & J. 127.
(*k*) *Henvell* v. *Whitaker*, 3 Russ. 343.
(*l*) *Greville* v. *Brown*, 7 H. L. C. 689; 34 L. T. (O. S.) 8; 7 W. R. 673; 5 Jur. (N. S.) 849.
(*m*) *Francis* v. *Clemow*, 18 Jur. 223; 23 L. J. Ch. 288; 23 L. T. (O. S.) 57; 2 W. R. 308; 2 Eq. R. 426; Kay, 435.
(*n*) *Conron* v. *Conron*, 7 H. L. C. 168.
(*o*) *Re Emmerton*, *Maskell* v. *Farrington*, 7 L. T. 301; 11 W. R. 127; 8 Jur. (N. S.) 1198; 1 N. R. 37.
(*p*) *Bright* v. *Larcher*, 28 L. J. Ch. 837; 7 W. R. 658; 5 Jur. (N. S.) 1233; 3 De G. & J. 148.
(*q*) Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 21.

reasonable evidence to show whether interlineations were in a will at the time of its execution, and will not insist upon the oath of the attesting witnesses (*r*).

In cases of obliteration inspection by the aid of glasses is allowed, but not external evidence or other means to show what the original words were (*s*).

Statements of a testator, whether made before or after the execution of the will, are admissible to show what papers constitute the will (*t*); and statements made by him before the execution to show when alterations were made (*u*).

It has always been necessary that a will relating to leasehold or other personal estate should be proved, while until recently a will of realty required no proof to make it available as a document of title; but now, inasmuch as real estate, on a death after the 31st December, 1897, devolves on the legal personal representatives (*x*), this distinction between real and personal estate under wills of persons so dying has ceased to exist, and such a will of realty requires to be proved, or letters of administration obtained, before the real property can be effectually dealt with. Until that time the legal estate, it seems, goes on an intestacy to the heir-at-law, from whom it shifts when the time arrives : it has been suggested that where a testator makes a will devising real estate upon trusts to persons whom he also appoints executors, such persons cannot make a title to the real estate until they have proved the will (*y*).

Probate or an office copy of a will proved in solemn form, or the validity of which has been declared in a contentious matter, is conclusive evidence of the validity and contents

(*r*) *In the goods of Hindmarch*, L. R. 1 P. & D. 307; 36 L. J. P. & M. 24; 15 L. T. 391.

(*s*) *In the goods of Horsford*, L. R. 3 P. & D. 211; 44 L. J. P. & M. 9; 31 L. T. 553; 23 W. R. 211.

(*t*) *Gould* v. *Lakes*, 6 P. D. 1; 49 L. J. P. 59; 43 L. T. 382; 29 W. R. 155; 44 J. P. 698.

(*u*) *In the goods of Sykes*, L. R. 3 P. & D. 26; 42 L. J. P. & M. 17; 28 L. T. 142; 21 W. R. 416; *Dench* v. *Dench*, 2 P. D. 60; 46 L. J. P. 13; 25 W. R. 414.

(*x*) Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s. 1.

(*y*) *John* v. *John*, [1898] 2 Ch. 573, at p. 576; 67 L. J. Ch. 616; 79 L. T. 362; 47 W. R. 52.

of the will in all proceedings affecting real estate (*z*); and even where a will is not proved in solemn form, probate or an office copy is evidence of the will, its validity and contents, as affecting reality, provided that ten days' notice before the trial be given by the party intending to adduce it, and the party receiving the notice does not, within four days after such receipt, give notice that he disputes its validity (*a*); but this does not preclude the party receiving the notice from disputing the competency of the testator or the validity of the will, but only makes the probate *primâ facie* evidence (*b*). It is the practice in investigating title to accept probate or an office copy as sufficient evidence, unless strong ground of suspicion exists. The production of probate or letters of administration is also sufficient proof of death of the testator or intestate.

See ADMINISTRATORS, SALES AND MORTGAGES BY — APPOINTMENTS—CHARGES BY WILL—EXECUTORS, SALES AND MORTGAGES BY—LEGAL ESTATE—REGISTRATION OF DEEDS AND WILLS—TRUSTEES, SALES AND MORTGAGES BY—VESTING.

Requisitions.

1. *The devise of the Whiteacre Farm by A. B. to C. D., through whom the vendor claims as heir-at-law, would have lapsed by the death of C. D. in A. B.'s lifetime. It must therefore be shown that C. D. survived A. B.*

2. *The devise of the Blackacre Farm by A. B. to his son C. B. would have lapsed by the death of C. B. in A. B.'s lifetime, unless his grandson, D. B., was in existence, or some other issue of C. B. was living at the death of A. B. Evidence to this effect must therefore be adduced.*

3. *It appears from his marriage settlement that A. B. married subsequently to the date of his will, abstracted*

(*z*) Court of Probate Act, 1859 (20 & 21 Vict. c. 77), s. 62.
(*a*) *Ibid.* s. 64.
(*b*) *Barraclough* v. *Greenhough*, L. R. 2 Q. B. 612; 36 L. J. Q. B. 251; 15 W. R. 934.

on page . The will would therefore be revoked. It is presumed that he afterwards made a codicil reviving it. Such codicil must be abstracted.

4. *The will of C. D. must be proved before completion, he having died subsequently to* 31*st December,* 1897.

5. *The will of A. B., deceased, dated , 1837, does not appear to have been executed in the manner then requisite to pass real estate. How is it proposed to meet this objection?*

6. *Blackacre is not specifically mentioned in the will of the testator made in* 1837. *It must therefore be proved, by statutory declaration or otherwise, that he was seised of Blackacre at the date of the will, and thenceforward retained seisin thereof until the date of his death.*

7. *The abstract should be supplemented by setting out the complete attestation clause of the will of A. B., who was entitled to a share of the residuary estate offered as security, and who died domiciled abroad, and evidence must be supplied that the formalities required to make valid bequests of personal estate according to* [*French*] *law were complied with, and further, that the will was not revoked by the testator before his death. An attested copy of the will must also be supplied to the purchaser.*

WORDS OF LIMITATION.

See Entail—Fee Simple.

WRITS.

See Judgments, Writs and Orders, Registration of.

APPENDIX A.

Common Form and Miscellaneous Requisitions.

1. *There is nothing to show that [the plot of ground on which the house contracted to be sold was built] formed part of [the Whiteacre estate, the title to which is disclosed]. How does the vendor propose to prove this?*

2. *Has the road in the front of the property contracted to be sold been taken over by the district council? If not, any subsisting liability in respect of it must be satisfied before completion.*

3. *Has the back street mentioned in the parcels to the indenture of* 19 *been made? Is there any sum due in respect of such making or of repair?*

4. *It is presumed that the dotted lines on the plan annexed to the particulars of sale indicate the road mentioned in the particulars of lot . Is this a public or a private road? If the latter, a right of way over it must be granted to the purchaser. By whom is it repairable?*

5. *What is the nature of the present tenancy? Is any notice to quit necessary?*

6. *It is presumed that vacant possession will be given on completion. If not, please supply full particulars of any existing tenancy.*

7. *It is presumed that the counterparts of the expired as well as of the existing leases will be handed over to the purchaser on completion.*

8. *Are any and, if any, which of the walls or fences bounding the property contracted to be sold party walls or fences?*

9. *Has any notice under the Public Health Act been recently served upon the owner or occupier in respect of the property contracted to be sold? If so, has it been duly complied with?*

10. *What is the name and address of the person in whose custody the documents [by the indenture of* 19 *covenanted to be produced] now are, and where can they be inspected?*

11. *The judgment in the action of A.* v. *B. is not properly abstracted. There is nothing to show who were the defendants other than B., or that they were the persons in whom the lease was vested. The proceedings should be fully abstracted so that it may be seen that all the persons interested in the lease are bound by the judgment.*

12. *What was the lease referred to in the indenture of* 19 *as "a certain lease therein mentioned," and in whom was it vested?*

13. *The lease referred to in the indenture of* 19 *should be abstracted, as also the surrender of it, if it has been surrendered.*

14. *In whose possession was the conveyance referred to in the conditions of sale as having been lost last known to be? The purchaser should be supplied with a statutory declaration showing the circumstances under which the loss occurred. The trustees should make a statutory declaration that they have not previously sold, and the tenant for life that he has not sold or assented to any sale of the property in question.*

15. *Was any settlement made on the marriage of Mrs. A.?*

16. *It does not appear that the original settlement made on the marriage of A. B., deceased, has been produced. This must be done.*

17. *The hereditaments purchased out of the proceeds of sale of the property originally settled were directed to be "settled and assured upon similar uses and trusts to those concerning the hereditaments" settled by the original settlement. Why, then, was the conveyance of the ground rent taken to the use of A. B. without any reference to the trusts on which he held them, and without, so far as the abstract shows, any other deed being executed declaring the trusts?*

18. *Which of the deeds and documents appearing on the abstract will be handed over to the purchaser, and which retained by any, and what, other persons? Who will acknowledge the right to the production and undertake for the safe custody of those retained?*

19. *Is there any tithe, tithe rentcharge, or land tax payable in respect of the property sold?*

20. *Are there any easements,* profits à prendre, *restrictive covenants, or other rights affecting the property contracted to be sold?*

21. *Have the vendors had any notice of any dealing with any part of the interests of any of the beneficiaries under the settlement other than those appearing in the abstract, or of any*

bankruptcy or other circumstance that would prevent any of the beneficiaries from dealing with their interests in the property?

22. *Is there, to the knowledge of the vendors or their solicitors, any settlement, deed, fact, omission, or any incumbrance affecting the property not disclosed by the abstract?*

[Neither the vendors nor their solicitors are bound to answer any part of this requisition (*a*); but it is often inserted in the hope of obtaining a reply.]

23. *Did the [assignment] of* 19 *of A. B.'s share include accrued shares as well as his original share? The parcels should be more fully set out in the abstract so as to show this.*

24. *Notice having been given to the purchaser by [the clause of the contract for sale dealing with the manner in which the vendors are to convey] that the vendors are trustees, he must be satisfied that they are acting in accordance with their trusts in selling. For this purpose an abstract of the settlement or will under which the trusts arise must be supplied, and the time to make requisitions must be extended until* [10] *days after it is delivered.*

25. *It appears by the abstract that the property is still subject to* (1) *the mortgage of* 19 *to for £ and costs;* (2) *the mortgage of* 19 *to for £ ;* (3) *the mortgage of* 19 *to for £ . Will these be paid off before completion, or will the mortgagees join in the conveyance to the purchaser? If the former, an abstract of the proposed reconveyances should be supplied. If the latter, it should be stated how the purchase-money is to be applied.*

26. *The right is reserved by the purchaser to make any further objections or requisitions arising out of the above requisitions and the replies thereto, and on the further abstract not yet delivered.*

(*a*) *Re Ford and Hill*, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371.

APPENDIX B.

Specimen Abstract of Title, with Analysis and Notes on Title disclosed, Opinion and Requisitions, Replies thereto, and Further Requisitions.

ABSTRACT of the TITLE of Mr. John Nokes to Two Freehold Messuages Nos. 8 and 9 River Avenue and One Leasehold Messuage No. 10 River Avenue both at Pickering in the county of York.

As to both the freehold and leasehold messuages.

1880 5 July — By his Will of this date John Smith of Skelton in Cleveland in the county of York Yeoman directed his debts to be paid and subject to payment thereof and to payment of £1000 to his adopted daughter Jane Smith he

Devised and Bequeathed all his lands in the said county and elsewhere to his nephew Charles absolutely

And he appointed Richard Jones of the city of York linendraper executor and trustee of his will

1880 21 Sept. — The said John Smith died

1880 26 Oct. — The said will was proved in the District Registry at York by the executor therein named

As to the freehold messuages only.

1881 3 Jan. — By Indenture of this date made between Charles Robinson of Pickering in the county of York gentleman of the one part

and Benjamin Isaacs of the city of York financier of the other part

After reciting that the said C. Robinson was seised in fee simple of the hereditaments thereinafter mentioned

And reciting agreement for a loan

It was witnessed that in consideration of the sum of £1000 paid by the said B. Isaacs to the said C. Robinson (receipt &c.) He the said C. Robinson did thereby for himself his heirs executors and administrators covenant with the said B. Isaacs his executors and administrators for payment on the 3rd of July then next of the said sum with interest thereon at £4 10*s.* per cent. per annum And it was also witnessed that for the consideration aforesaid the said C. Robinson did thereby grant unto the said B. Isaacs his heirs and assigns

All and singular the hereditaments and premises comprised in the schedule thereunder written as were particularly delineated and described in the plan thereof drawn on the margin of the now abstracting indenture and therein coloured red

Together with all messuages &c.

And all the estate &c.

To hold the said hereditaments thereby granted unto the said B. Isaacs his heirs and assigns

To the use of the said B. Isaacs his heirs and assigns for ever subject as in the now reciting indenture was mentioned and subject also to the proviso for redemption thereinafter contained

Proviso for redemption on payment by said C. Robinson his heirs executors administrators or assigns on the said 3rd of July next to the said B. Isaacs his executors administrators or assigns of the said sum of £1000 with interest thereon at £4 10*s.* per cent. per annum

Usual covenants for title by mortgagor

Usual power of sale and usual mortgage clauses

The Schedule above referred to contains (*inter alia*)

All that piece or parcel of freehold building ground containing by estimation 798 superficial yards or thereabouts situate at Pickering aforesaid and bounded on the north by the river

Mole on the south by the Malton road and on the east and west by property belonging to William Jones

Executed by said C. Robinson and attested

Receipt for mortgage money indorsed and signed by said C. Robinson

Registered at Northallerton in Book Page No.

1881 4 Sept. By Indenture of this date made between said C. Robinson of the one part and John Nokes of Kingston-upon-Hull corn merchant and William Nokes of the same place hotel proprietor of the other part

After reciting as in the last abstracted indenture

And reciting the last abstracted indenture

And reciting agreement for loan

It was witnessed that in consideration of £250 by the said J. Nokes and W. Nokes to the said C. Robinson paid &c. (the receipt &c.) He the said C. Robinson did thereby grant unto said J. Nokes and W. Nokes

The premises referred to in the lastly abstracted indenture

Together with all messuages &c.

And the appurtenances

And all the estate &c.

To hold the said premises unto and

To the use of said J. Nokes and W. Nokes their heirs and assigns subject to the last abstracted indenture

Proviso for redemption on payment by said C. Robinson his heirs executors administrators or assigns to said J. Nokes and W. Nokes or the survivor of them his executors or administrators or their or his assigns of said sum of £250 with interest at the rate of £6 per cent. per annum on the 4th March then next

COVENANT by said C. Robinson with said J. Nokes and W. Nokes for payment of the said sum of £250 and for payment of interest after default

PROVISO that it should be lawful for the said J. Nokes and W. Nokes or the survivor of them his executors or administrators or their or his assigns at any time or times after default should have been made in payment of the said principal moneys at the time when the same ought to have been paid in pursuance of the proviso and covenant before abstracted without any further consent on the part of the said C. Robinson his heirs &c. or of any other person to sell and dispose of the said hereditaments expressed to be thereby conveyed or any part thereof either together or in parcels and either by public auction or private contract under such special or other stipulations relative to title or otherwise as the mortgagees or the survivor of them his executors &c. should deem proper and to make any such sale as aforesaid either subject to the thereinbefore mentioned indenture of mortgage or with the consent of the persons entitled to the moneys thereby respectively secured freed and discharged from the same and in the latter case upon the terms of such moneys or any of them being discharged out of the purchase-money or otherwise and for the purposes aforesaid or any of them to enter into and to execute all such contracts and assurances as he or they should think proper

PROVISO that the said mortgagees or the survivor of them their executors &c. should not execute the power of sale lastly abstracted unless and until they or he should have given left or sent to the mortgagor his heirs or assigns notice in writing requiring payment of the moneys for the time being owing upon the security of abstracting presents and default should have been made in payment of such moneys or some part thereof for the space of three calendar months from the time of giving leaving or sending such notice or unless and until the whole or part of some half-yearly payment of interest which should have become due upon the security of abstracting presents should have become in arrear for two calendar months

PROVISO that no purchaser or purchasers under the said power of sale should be bound and concerned to inquire or ascertain

whether either of the cases lastly thereinbefore mentioned has happened or otherwise as to the propriety or regularity of any such sale and notwithstanding such the same should as far as regards the safety and protection of the purchaser or purchasers be deemed to be within the aforesaid power in that behalf and be valid and effectual accordingly

Declaration that the receipts of the said mortgagees or the survivor of them his executors &c. their or his assigns for the moneys payable to them or him upon any such sale as aforesaid should effectually discharge the purchaser or purchasers therefrom and from being concerned to see to the application thereof or being answerable or accountable for any loss or misapplication thereof

Declaration as to the application of purchase-moneys

Declaration that the aforesaid power of sale might be exercised by any person or persons who for the time being should be entitled to receive and give a discharge for the moneys owing on the security of now abstracted presents

Covenants by the said C. Robinson for himself his heirs &c.
for right to convey (subject as aforesaid)
For quiet enjoyment
Free from incumbrances &c.
For further assurance

Executed by the said C. Robinson and attested

Registered at Northallerton in Book
Page No.

1910 The said William Nokes died

1 June 1915 Agreement between J. Nokes of the one part and Thomas
4 Mar. James of the other part

Reciting that J. Nokes had some time since entered into possession as mortgagee of hereditaments thereby agreed to be let

It was agreed that said J. Nokes should let and said T. James should take from year to year commencing the 1st of March 1915

All that messuage or tenement situate and being No. 8 in River Avenue in the parish of Pickering aforesaid

As to the leasehold messuage only.

By INDENTURE of this date made between said C. Robinson of the one part and said J. Nokes of the other part 1881 21 July

AFTER RECITING that by indenture dated 1st January 1880 and made between Thomas Beck of the one part and William Smith of the other part All that newly built messuage with the garden and appurtenances situate in a new road proposed to be called River Avenue in the parish of Pickering aforesaid were demised to said William Smith his executors administrators and assigns for the term of 99 years from the 1st of May 1879 at the yearly rent of £10 subject to covenants by the lessee and conditions therein contained

AND RECITING that by divers of mesne assignments acts in the law and events the premises comprised in the indenture of lease had become absolutely vested in the said C. Robinson for the residue of the said term of 99 years

AND RECITING contract for sale of said premises by said C. Robinson to said J. Nokes for £250

IT WAS WITNESSED that in consideration of £250 by the said J. Nokes to said C. Robinson paid &c. (the receipt &c.) He the said C. Robinson did thereby assign unto said J. Nokes

ALL that messuage or tenement situate and being No. 10 in River Avenue in the parish of Pickering in the North Riding of the county of York and all other the premises demised by the said recited indenture of lease

TO HOLD unto the said J. Nokes his executors administrators and assigns for all the residue of the said term of 99 years

EXECUTED by said C. Robinson and J. Nokes and attested

RECEIPT for consideration money indorsed

REGISTERED at Northallerton in Book Page No.

Analysis and Notes on Title.

As to both the freehold and leasehold messuages.

5th July, 1880.	Will.	John Smith to "Nephew Charles."	Testator's seisin of freeholds? Testator's possession of leaseholds? Attestation clause. Registration. Charge of debts. Charge of legacies.
21st Sept., 1880.	Death.	John Smith.	
26th Oct., 1880.	Will proved.	John Smith.	Has vendor office copy?

As to the freehold messuages.

3rd Jan., 1881.	Mortgage.	Charles Robinson to Benjamin Isaacs.	Identity of "Nephew Charles" and Charles Robinson to be proved. Does Isaacs take purchase-money or any part thereof? Parcels? Plan? "Subject as in now reciting indenture was mentioned."
4th Sept., 1881.	Second mortgage.	Charles Robinson to *Vendor* and William Nokes.	Parcels? No joint account clause. Who takes purchase-money? No receipt indorsed. Power of sale insufficient?
1st June, 1910.	Death.	William Nokes.	How proved?
4th Mar., 1915.	Tenancy agreement. (No. 8.)	*Vendor* to Thomas James.	Notice to determine tenancy of No. 8? Tenancy of No. 9?

As to the leasehold messuage.

21st July, 1881.	Assignment.	Charles Robinson to *Vendor*.	Original lease to be abstracted. Executor's assent to bequest? Tenancy of No. 10?

General Requisitions and Observations.

Road taken over?
Land Tax?
Tithe rentcharge?
Easements?
Restrictive covenants?
Statutory charges?
Current outgoings to be apportioned?
Ground rent—last receipt, and to whom payable?
Fire insurance?
Stamps?
Deeds to be handed over?
Reserve right to make further requisitions.

Opinion and Requisitions.

I have perused this abstract and considered the title disclosed. Requisitions should be made to the following effect:—

As to both the Freehold and Leasehold Messuages.

(1) It must be shown that the testator, John Smith, was seised in fee simple of the freehold houses, and was possessed of the leasehold house at the time of his death free from incumbrances.

(2) The attestation clause of the will of John Smith must be abstracted to show that the testator's nephew Charles was not an attesting witness.

(3) Evidence is required that Charles Robinson was the person referred to in the will of John Smith as "my nephew Charles."

As to the Freehold Messuages only.

(4) Was John Smith's will duly registered at Northallerton within six months from the death of the testator? If so, the reference to the book, page, and number should be supplied. If not, the will must be registered at the vendor's expense, or the testator's heir-at-law must concur in the conveyance. In any case the purchaser will require to know the name of the testator's heir-at-law to enable him to search the register for conveyances and mortgages by such heir-at-law.

(5) Evidence of the payment of the legacy of 1,000*l.* to Jane Smith must be supplied.

(6) The first mortgagee must join in the conveyance. Is the purchase-money or any part of it to be paid to him?

(7) To what do the words "subject as in now reciting indenture was mentioned," on p. 2 of the abstract, refer?

(8) Evidence must be furnished of the identity of the property comprised in the mortgages with the freehold part of the property contracted to be sold. A tracing of the plan referred to in the mortgage of the 3rd January, 1881, must be furnished to the purchaser.

(9) Do the legal personal representatives of William Nokes take any of the purchase-money? They must concur in the sale, the second mortgage having been made before the

Conveyancing Act, 1881, and containing no joint account clause.

(10) Probate of the will of William Nokes must be produced to show who are his legal personal representatives.

(11) Evidence must be furnished of the payment of the mortgage money as no receipt is indorsed upon the mortgage deed which was executed before the Conveyancing Act, 1881.

(12) It appears that the vendor has been in possession. Evidence must be produced to show that some of the money advanced remains owing. The power of sale given to the mortgagee is not such as to make this requisition unnecessary.

(13) Has any notice to determine the yearly tenancy of No. 8 been given or received? Who is the tenant of No. 9, and on what terms does he hold?

As to the Leasehold Messuage only.

(14) The lease of 1st January, 1880, must be abstracted in chief.

(15) How did John Smith become entitled to the lease?

(16) The assent of the executor to the specific bequest of the leaseholds contained in John Smith's will must be proved, or the executors must concur in the assignment.

(17) Who is the present tenant of No. 10, and on what terms does he hold?

General Requisitions and Observations.

(18) Has River Avenue been taken over by the local authority? If not, evidence must be furnished that all charges for paving and sewering have been satisfied.

(19) What is the amount of land tax and tithe rentcharge payable in respect of the property contracted to be sold? The amount of the latter should have been stated in the abstract.

(20) Is the vendor or are his solicitors aware of any easements, restrictive covenants, or other rights affecting the property?

(21) Have any charges been created for the purpose of improvement or drainage under statutory powers?

(22) All outgoings must be paid by the vendor up to the time fixed for completion, and the current outgoings must be apportioned.

(23) The last receipt for ground rent due under the lease must be produced. To whom is the ground rent now payable? Please supply full name and address.

(24) Is the property insured against fire, and if so, to what extent? It is presumed that the vendor will hold any existing insurance policies upon trust for the purchaser.

(25) All deeds and documents must be properly stamped before completion.

(26) Which of the abstracted deeds and documents will be handed over to the purchaser on completion? Who will give an acknowledgment of the purchaser's right to production of the deeds retained, and who will undertake for the safe custody thereof?

(27) Until the lease of 1st January, 1880, has been abstracted a complete abstract will not have been delivered. The purchaser reserves the right to make further requisitions until 14 days after the delivery of a complete abstract.

From the fact that the amount of the stamps on the various deeds and documents is not noted, and that no memorandum of production appears on the abstract, I presume that it has not yet been examined with the originals. This must, of course, be done in order to ascertain that nothing of importance has been omitted from the abstract, and that all the deeds and documents are properly stamped.

As the vendor is a mortgagee of the freeholds, and the property is not of a nature likely to be subject to statutory charges, the only searches that need be made are:—

For Dealings with the Freeholds.

At the Land Registry Office for *lis pendens*, the search extending back for five years.

In the county register at Northallerton, the search extending back to 4th September, 1881.

For Dealings with the Leaseholds.

At the Land Registry Office for *lis pendens*, the search extending back for five years, and for annuities, the search extending back to the 21st July, 1881.

At the Land Registry Office for writs and orders affecting land, the search extending back for five years, and for land charges since commencement (1889).

In the county register, the search extending back to the 21st July, 1881.

Unless something is known of the financial position of the vendor, a search extending back for 12 years should also be made for bankruptcies at the Bankruptcy Court, and for deeds of arrangement at the Land Registry Office.

Inquiry should be made of the various tenants as to the terms of their tenancies.

Subject to these observations and to the suggested requisitions being complied with, I am of opinion that a good title is disclosed by the abstract.

A. B.,
Lincoln's Inn,
25th April, 1922.

Answers to Requisitions.

(1) This is unnecessary, a forty years' title is shown without the will.

(2) The testator's will was attested by George Jenkins and Annie Tomkins.

(3) Charles Robinson was the only nephew of the testator named Charles. See answer to requisition 4.

(4) The testator's will was not registered under the Yorkshire Registry Acts. Charles Robinson was the eldest son of the testator's only sister Mary, and was his heir-at-law. The vendor is not prepared to give strict proof of this, but the certificates of the marriage of Mary Robinson and the birth of her son can, if required, be procured at the purchaser's expense.

(5) As the land is charged with the payment of debts as well as legacies, it is conceived that the purchaser is not bound or entitled to make this inquiry. Jane Smith died, we think, before the testator, but we have no particulars.

(6) Certainly; 500*l.* is to be paid direct to the first mortgagee.

(7) The words in question refer to a rentcharge to which other property in the schedule was subject. They have no reference to the property sold.

(8) The plan, a tracing of which we are furnishing, will enable the purchaser to satisfy himself on this point.

(9) and (10) John Nokes is sole executor of the will of William Nokes. The probate is in the possession of John Nokes, and will be produced if required.

(11) After so long a time this can hardly be necessary; the vendor is, however, willing to make a statutory declaration at the expense of the purchaser, that the money was actually paid.

(12) The vendor has been in possession for several years. He is unwilling to produce the evidence asked for. In our opinion the power of sale is sufficient to protect a purchaser. See *Dicker* v. *Angerstein* (*a*).

(13) No such notice has been given or received. No. 9 is at present unlet.

(14) This shall be done.

(15) We have no record to show. The purchaser is only entitled to a 40 years' title.

(16) As the testator died so long ago, and as the vendor has received the rents and profits for the last 40 years under an assignment from the specific legatee, this cannot reasonably be required.

(17) The present tenant of No. 10 holds under a 21 years' lease, but as this lease will expire before the date fixed for completion, it is considered unnecessary to abstract it.

(18) The avenue is, we believe, repairable by the local authority.

(19) The land tax payable last year in respect of No. 8 was 1*l.* 3*s.* 4*d.*; in respect of No. 9, 1*l.* 5*s.*; and in respect of No. 10, 1*l.* The tithe rentcharge payable in respect of all these properties was last year 19*s.* 9*d.*

(20) The vendor is not bound, and declines to answer this requisition (*b*).

(21) Not that we are aware of.

(22) This will be done.

(23) The ground rent is now payable to Mrs. Howard James (widow), of Inverness Terrace, Bayswater Road, London. The last receipt will be produced.

(24) The policy on Nos. 8 and 9 has just expired, and these houses are now uninsured. They are now at the purchaser's risk. No. 10 is insured in the X. Fire Office for 500*l.* The vendor is willing to hold this in trust for the purchaser on his agreeing to

(*a*) 3 Ch. D. 600; 45 L. J. Ch. 754; 24 W. R. 844.
(*b*) *Re Ford and Hill*, 10 Ch. D. 365; 48 L. J. Ch. 327; 40 L. T. 41; 27 W. R. 371.

pay a proportional part of the current premium, as from the date of the contract.

(25) All the deeds and documents abstracted are believed to be sufficiently stamped.

(26) The original lease of No. 10, and the abstracted assignment thereof, will be handed over to the purchaser. The vendor will give the usual acknowledgment of the purchaser's right to production of the second mortgage, and Mr. Isaacs will give the acknowledgment of the purchaser's right to production of the first mortgage. No undertaking will be given.

(27) Any further requisition must be strictly confined to the points arising on the abstracted lease and to these replies.

Further Opinion and Requisitions.

I have perused the supplemental abstract and the replies to requisitions, and subject to the following further requisitions being satisfactorily answered, I am of opinion that the vendor has made a title to the property which may safely be accepted.

(1)—(16) The answers to these requisitions may be accepted.

(17) The counterpart of the lease of No. 10 will, it is presumed, be handed over to the purchaser on completion.

(18)—(27) Answers may be accepted.

(28) Has any notice to repair the leasehold house in accordance with the covenant been served upon the vendor?

Evidence of the death of Jane Smith may, under the circumstances, be dispensed with, and as the plan appears to sufficiently identify the property, no further evidence of identity need be required.

It is not worth while to have the statutory declaration offered in reply to requisition (11).

A. B.,
Lincoln's Inn,
9th May, 1922.

APPENDIX C.

Form of Statutory Declaration as to Identity of Parcels and Possession.

I of in the county of do solemnly and sincerely declare as follows:—

1. I am years of age. For the last years I have resided in and near in the county of . I have during the whole of that time [*or*, for the last years] been well acquainted with the freehold house, garden, land, and premises at aforesaid, known as House, lately contracted to be sold to A. B., and which is more particularly delineated in the plan hereto annexed.

2. I have read the description of a house, land, and premises contained in an indenture, dated [*&c.*], and made between [*&c*], of the one part, and [*John James, of, &c.*], of the other part.

3. I verily believe that the piece of land coloured [*green*] on the said plan and the house thereon are part of the land and premises which were comprised in and conveyed to the said [*John James*] by the said indenture.

4. During the said period of years, the said house and premises coloured [*green*] in the said plan (being the premises so contracted to be sold as aforesaid) were the property of the said [*John James*] up to the time of his death on the [1st of August] last, and he was then seised of the same, and the said premises have since the said date been the property of the trustees of the will of the said [*John James, deceased*], and the said [*John James, deceased*] was, during the whole of the said period until his death, and his said trustees have since his death, been in full, free, and undisturbed possession and enjoyment of the said premises, or the rents and profits thereof, without any adverse claim being made or acknowledgment being given to the best of my belief to any other person; as I know from [*here state any means of knowledge*, e.g., *that the deponent has been agent for*

the estate and collected the rents; or has acted as solicitor to owners and been in constant communication with them and the tenants, or as the case may be].

And I make this declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835 (*a*).

(*a*) 5 & 6 Will 4, c. 62; Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 68.

APPENDIX D.

Bond of Indemnity from Vendor to Purchaser [applicable to Cases where Title too Short and where Title Deeds lost].

Know all men by these presents that I [*A. B.*], of [*&c.*], am bound to [*C. D.*], of [*&c.*], in the sum of l. [*twice the loss which the obligee would incur by the failure of the obligor to satisfy the condition*], to be paid to the said [*C. D.*], his heirs, executors, administrators, or assigns, for which payment I bind myself by these presents.

Sealed with my seal. Dated this day of , 19 .

Whereas by an indenture of even date herewith and made between the said [*A. B.*] of the one part and the said [*C. D.*] of the other part, the said [*A. B.*] conveyed to the said [*C. D.*] all that piece or parcel of land situate [*&c.*].

And whereas [*state event in consequence of which the bond has been required, thus,* "the said [*C. D.*] has objected to the title to the said premises commencing at too recent a date," *or* "the deeds and documents of title relating to the said premises (*if certain deeds only, specify them here or in a schedule*) have been lost or mislaid," *or as the case may be*].

And whereas the said [*A. B.*] has agreed to enter into this bond ["in addition to giving [*C. D.*] the usual implied covenants for title,"] in relation to the said premises [*or as the case may be*].

Now the condition of the above-written bond is such, that if [*here state events thus,* "the hereditaments expressed to be conveyed by the said indenture of even date herewith with their appurtenances shall henceforth go and remain to the use of the said [*C. D.*] in fee simple and be peaceably and quietly held and

enjoyed," *or* "the said [*A. B.*], his heirs, executors, or administrators shall use his and their best endeavours to find the said deeds and documents of title, and shall, in case he or they shall find the same or any of them, forthwith deliver the deeds and documents whole, uncancelled, and undefaced, or in the condition in which the same shall be found to the said [*C. D.*], his heirs, executors, administrators, or assigns," *or* "the said [*A. B.*], his heirs, executors, or administrators shall at all times hereafter keep indemnified the said [*C. D.*], his heirs, executors, administrators, and assigns, and all and every part of the premises by the said indenture of even date expressed to be conveyed respectively against all mortgages, charges and incumbrances whatsoever in anywise affecting the said premises or any of them, or any part thereof, other than incumbrances to be created by the said [*C. D.*], his heirs, executors, administrators, or assigns, and against all actions, proceedings, claims and demands, costs, damages, and expenses which may be brought or made against him or them, or which he or they may sustain or incur by or by means of any person or persons who shall or may have or claim any estate, title, or interest in or to the premises or any part thereof other than persons claiming under the said [*C. D.*]," *or as the case may be*], then the above-written bond shall be void, otherwise the same shall be and remain in full force and effect.

Signed, sealed, and delivered by the above-named A. B. in the presence of)

APPENDIX E.

Costs under the Solicitors' Remuneration Act, 1881.

The remuneration of solicitors in respect of business connected with sales, purchases, mortgages, settlements, and other matters of conveyancing, and in respect of other non-contentious business, is now regulated by the Solicitors' Remuneration Act, 1881 (*a*), and the General Orders made thereunder. A solicitor and client may, however, agree before, after, or in the course of the transaction of any business for the remuneration of the solicitor to such amount and in such manner as they think fit (*b*). But this will not render valid an assignment to a solicitor in an action of the fruits of the litigation which he is conducting (*c*); such an assignment being voidable under the principle applied in *Simpson* v. *Lamb* (*d*). The agreement must be in writing and signed by the person to be bound by it or by his agent (*e*), but need not be signed by both parties (*f*). It may be made on terms that the remuneration shall include or not include the solicitor's disbursements (*g*).

Where, under any order for taxation of costs, such an agreement is relied upon by a solicitor, it may be objected to by the client on the ground that it is unfair or unreasonable, and the taxing master or other officer of the Court may inquire into the facts and certify the same to the Court, and the Court may then, upon just cause being shown for cancelling the agreement or reducing the amount payable under it, order such cancellation or reduction and give all necessary and proper directions for carrying the order into effect (*h*).

(*a*) Solicitors' Remuneration Order, 1882.
(*b*) 44 & 45 Vict. c. 44, s. 8 (1).
(*c*) *Davis* v. *Freethy*, 24 Q. B. D. 519; 59 L. J. Q. B. 318.
(*d*) 7 El. & Bl. 84; 26 L. J. Q. B. 121; 28 L. T. (O. S.) 245; 5 W. R. 227; 3 Jur. (N. S.) 412.
(*e*) 44 & 45 Vict. c. 44, s. 8 (2).
(*f*) *Re Frape, Ex parte Perrett*, [1893] 2 Ch. 284; 62 L. J. Ch. 473; 68 L. T. 558; 41 W. R. 417; 2 R. 411.
(*g*) 44 & 45 Vict. c. 44, s. 8 (3).
(*h*) *Ibid.* s. 8 (4).

The first general order made in pursuance of the Act came into operation from and after the 31st December, 1882 (*i*). It applies to conveyancing business commenced before but not finished until after that date (*k*).

All drafts and copies made in the course of business, the remuneration for which is provided for by the order, are the property of the client (*l*).

A solicitor may be allowed a proper additional remuneration for the special exertion in respect of any business which is required to be and is carried through by special exertion in an exceptionally short space of time (*m*).

A solicitor may accept from his clients security for the amount to become due to the solicitor for business to be transacted by him, and for interest on such amount, but so that interest is not to commence until the amount due is ascertained by agreement or taxation (*n*).

A solicitor may charge interest at 4 per cent. per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client (*n*), and it is not necessary for the solicitor to make the claim for interest at the time of delivering his bill (*o*).

In cases where the bill is payable by an infant, or out of a fund not presently available, the demand may be made on the parent or guardian, or on the trustee or other person liable (*n*).

Where the client has died, the bill must be delivered to his legal personal representative (*p*).

Schedule I.

This schedule of the order provides for the remuneration of solicitors for sales, purchases, mortgages, and leases and agreements for leases other than mining leases and agreements therefor.

(*i*) G. O. r. 1.

(*k*) *Re Lacey*, 25 Ch. D. 301; 53 L. J. Ch. 287; 49 L. T. 755; 32 W. R. 233; *Re Field*, 29 Ch. D. 608; 54 L. J. Ch. 661; 52 L. T. 480; 33 W. R. 553; 49 J. P. 613; *Fleming* v. *Hardcastle*, 52 L. T. 851; 33 W. R. 776; W. N. (1885) 106.

(*l*) G. O. r. 3.

(*m*) *Ibid.* r. 5.

(*n*) *Ibid.* r. 7.

(*o*) *Blair* v. *Cordner*, 19 Q. B. D. 516; 56 L. J. Q. B. 642; 36 W. R. 109.

(*p*) *Re McMurdo*, [1897] 1 Ch. 119; 66 L. J. Ch. 67; 75 L. T. 576; 45 W. R. 244.

The scale only applies where the work referred to in the schedule has in fact been done (*q*). But where there was a sub-sale of part of property originally sold, and the original transaction was carried out by a conveyance of such part by the original vendor to the sub-purchaser, and of the remainder by such vendor direct to the purchaser, it was held that the solicitor had done all that was necessary for the completion of a conveyance under the original contract, and that he was entitled to two scale fees, one on the purchase by his client, and the other on a sale by his client (*r*).

The scale has no application to transactions respecting real property, the title to which has been registered under the Land Registry Act, 1862 (*s*), the Declaration of Title Act, 1862 (*t*), and the Land Transfer Acts, 1875 and 1897 (*u*).

In all cases to which Schedule I. would otherwise apply, a solicitor may, before undertaking any business, by writing under his hand communicated to the client, elect that his remuneration shall be according to the old system as altered by Schedule II. to the General Order (*x*) The election must be made before the solicitor has done any work for which he could charge if the scale did not apply (*y*). If the solicitor does not make this election Schedule I. applies (*x*).

The remuneration includes law stationer's charges and allowances for time of the solicitor and his clerks, and for copying and parchment, and all other similar disbursements, but does not include stamps, counsel's fees, auctioneer's or valuer's charges, travelling or hotel expenses, fees paid on searches, to public officers on registrations or to stewards of manors, costs of extracts from any register, record or roll, or disbursements reasonably and properly paid, nor any extra work occasioned by changes occurring in the course of any business such as the death or insolvency of a party to the transaction, nor is it to include any business of a contentious character nor any proceedings in any Court (*z*).

(*q*) *Re Lacey*, 25 Ch. D. 301; 53 L. J. Ch. 287; 49 L. T. 755; 32 W. R. 233.
(*r*) *Re Read*, [1894] 3 Ch. 238; 63 L. J. Ch. 831; 71 L. T. 189; 42 W. R. 601; 8 R. 489.
(*s*) 25 & 26 Vict. c. 53.
(*t*) *Ibid.* c. 67.
(*u*) 38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65; G. O. r. 1.
(*x*) G. O. r. 6.
(*y*) *Re Allen*, 34 Ch. D. 433; 56 L. J. Ch. 487; 56 L. T. 6; 35 W. R. 218; 51 J. P. 325; *Hester* v. *Hester*, 34 Ch. D. 607; 56 L. J. Ch. 247; 55 L. T. 862; 35 W. R. 233; 51 J. P. 438.
(*z*) G. O. r. 4.

PART I.—Scale of Charges on Sales, Purchases, and Mortgages and Rules applicable thereto.

SCALE.

	(1.) For the 1st £1,000.	(2.) For the 2nd and 3rd £1,000.	(3.) For the 4th and each subsequent £1,000 up to £10,000.	(4.) For each subsequent £1,000 up to £100,000.	(5.) For £100,000 or more.
	Per £100. *s.*	Per £100. *s.*	Per £100. *s. d.*	Per £100. *s. d.*	Scale Charge. £
Vendor's solicitor—					
For negotiating a sale of property by private contract ...	20	20	10 0	5 0	290
For conducting a sale of property by public auction, including the conditions of sale—					
When the property is sold	20	10	5 0	2 6	150
When the property is not sold, then on the reserved price	10	5	2 6	1 3	75
[N.B.—A minimum charge of £5 to be made whether a sale is effected or not.]					
For deducing title to freehold, copyhold, or leasehold property, and perusing and completing conveyance (including preparation of contract or conditions of sale, if any)	30	20	10 0	5 0	295
Purchaser's solicitor—					
For negotiating a purchase of property by private contract	20	20	10 0	5 0	290
For investigating title to freehold, copyhold, or leasehold property, and preparing and completing conveyance (including perusal and completion of contract, if any) ...	30	20	10 0	5 0	295
Mortgagor's solicitor—					
For deducing title to freehold, copyhold, or leasehold property, perusing mortgage, and completing	30	20	10 0	5 0	295
Mortgagee's solicitor—					
For negotiating loan	20	20	5 0	2 6	160
For investigating title to freehold, copyhold, or leasehold property, and preparing and completing mortgage ...	30	20	10 0	5 0	295
Vendor's or mortgagor's solicitor—					
For procuring execution and acknowledgment of deed by a married woman	50 extra.	—	—	—	—

DECISIONS ON PART I. SCALE.

If a sale or mortgage is arranged partly by the assistance of an agent, the fee for negotiation is not payable to the vendor's or mortgagee's solicitor. (*Re Withall*, [1891] 3 *Ch.* 8; 61 *L. J. Ch.* 14; 64 *L. T.* 704; 39 *W. R.* 529.)

A solicitor merely delivering a statement of the leases under which his client holds is not entitled to a fee for deducing. (*Wellby* v. *Still*, [1894] 3 *Ch.* 641; 63 *L. J. Ch.* 931; 71 *L. T.* 426; 43 *W. R.* 73; 8 *R.* 658.)

The fee for preparing and completing conveyance covers registration of memorial in register counties. (*Grey* v. *Curtice*, [1899] 1 *Ch.* 121; 68 *L. J. Ch.* 60; 79 *L. T.* 713; 47 *W. R.* 294.)

Freehold includes an advowson. (*Re Earnshaw-Wall*, [1894] 3 *Ch.* 156; 63 *L. J. Ch.* 836; 71 *L. T.* 173; 42 *W. R.* 567; 8 *R.* 558).

"Loan" means mortgage; where, therefore, there is no actual advance of money, but moneys are secured, the scale applies (*D'Arcy to White*, 31 *L. R. Ir.* 142); *and it is not confined to mortgages of freehold, copyhold, or leasehold property.* (*Re Furber*, [1898] 2 *Ch.* 538; 67 *L. J. Ch.* 593; 79 *L. T.* 266; 47 *W. R.* 184.)

RULES AND DECISIONS THEREON.

1. The commission for deducing title and perusing and completing conveyance on a sale by auction is to be chargeable on each lot of property, except that where a property held under the same title is divided into lots for convenience of sale, and the same purchaser buys several such lots and takes one conveyance, and only one abstract is delivered, the commission is to be chargeable upon the aggregate prices of the lots.

2. The commission on an attempted sale by auction in lots is to be chargeable on the aggregate of the reserved prices. When property offered for sale by auction is bought in and terms of sale are afterwards negotiated and arranged by the solicitor, he is to be entitled to charge commission according to the above scales on the reserved price where the property is not sold, and also one-half of the commission for negotiating the sale. When property is bought in and afterwards offered by auction by the same solicitor, he is only to be entitled to the scale for the

first attempted sale; and for each subsequent sale ineffectually attempted he is to charge according to the present system, as altered by Schedule II. hereto. In case of a subsequent effectual sale by auction, the full commission for an effectual sale is to be chargeable in addition, less one-half of the commission previously allowed on the first attempted sale. The provisions of this rule as to commission on sales or attempted sales by auction are to be subject to Rule 11.

Where property was offered for sale by auction, then withdrawn and sold the same day by private contract, held that the vendor's solicitor was entitled to charge for conducting. (*Re Beck*, 24 *Ch. D.* 608; 52 *L. J. Ch.* 815; 49 *L. T.* 95; 31 *W. R.* 910.)

3. Where a solicitor is concerned for both mortgagor and mortgagee, he is to be entitled to charge the mortgagee's solicitor's charges and one-half of those which would be allowed to the mortgagor's solicitor up to 5,000*l.*, and on any excess above 5,000*l.*, one-fourth thereof.

4. If a solicitor peruses a draft on behalf of several parties having distinct interests, proper to be separately represented, he is to be entitled to charge 2*l.* additional for each such party after the first.

5. Where a party, other than the vendor or mortgagor, joins in a conveyance or mortgage, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II. hereto.

6. Where a conveyance and mortgage of the same property are completed at the same time, and are prepared by the same solicitor, he is to be entitled to charge only half the above fees for investigating title and preparing the mortgage deed up to 5,000*l.*, and on any excess above 5,000*l.*, one-fourth thereof, in addition to his full charges upon the purchase-money and his commissions for negotiating (if any).

7. Fractions of 100*l.*, under 50*l.*, are to be reckoned as 50*l.* Fractions of 100*l.*, above 50*l.*, are to be reckoned as 100*l.*

Where property is sold in lots the commission for conducting the sale is chargeable on the total amount realized by the sale, though the lots be held under different titles and sold to different purchasers. (*Re Onward Building Society, Ex parte Watson*, [1893] 1 *Q. B.* 16; 62 *L. J. Q. B.* 80; 68 *L. T.* 443; 41 *W. R.* 107; 57 *J. P.* 439.)

8. Where the prescribed remuneration would but for this provision amount to less than 5*l.*, the prescribed remuneration shall be 5*l.*, except on transactions under 100*l.*, in which cases the remuneration of the solicitor for the vendor, purchaser, mortgagor or mortgagee, is to be 3*l.*

On a sale by auction in lots of property under one title, each sale of one or more lots to a different purchaser forms a separate transaction within the meaning of this rule; so that where the scale charge for deducing title on any of the lots sold to different purchasers does not amount to 5l., the solicitor is entitled to charge a minimum fee prescribed by this rule in respect of each separate sale. (*Re Thomas, Evans* v. *Griffiths*, [1900] 1 *Ch.* 454; 69 *L. J. Ch.* 219; 82 *L. T.* 105; 48 *W. R.* 299.)

9. Where a property is sold subject to incumbrances, the amount of the incumbrances is to be deemed a part of the purchase-money, except where the mortgagee purchases, in which case the charge of his solicitor shall be calculated upon the price of the equity of redemption.

This rule applies to the case of a sale by a second mortgagee under his power of sale. (*Fortescue* v. *Mercantile Bank of London*, [1897] 2 *Q. B.* 236; 66 *L. J. Q. B.* 591; 76 *L. T.* 645; 45 *W. R.* 529.)

10. The above scale as to mortgages is to apply to transfers of mortgages where the title is investigated, but not to transfers where the title was investigated by the same solicitor on the original mortgage or on any previous transfer; and it is not to apply to further charges where the title has been so previously investigated. As to such transfers and further charges, the remuneration is to be regulated according to the present system as altered by Schedule II. hereto. But the scale for negotiating the loan shall be chargeable on such transfers and further charges where it is applicable.

11. The scale for conducting a sale by auction shall apply only in cases where no commission is paid by the client to an auctioneer. The scale for negotiating shall apply in cases where the solicitor of a vendor or purchaser arranges the sale or purchase and the price and terms and conditions thereof, and no commission is paid by the client to an auctioneer or estate or other agent. As to a mortgagee's solicitor, it shall only apply to cases where he arranges and obtains the loan from a person for whom he acts. In case of sales under the Lands Clauses

Consolidation Act, or any other private or public Act under which the vendor's charges are paid by the purchaser, the scale shall not apply.

The effect of this rule is not to deprive the solicitor of all remuneration for work done in the conduct of a sale by auction when the auctioneer's commission is paid by the client. In such case he is entitled to be paid for his work according to the old system as altered by Sched. II. (*Parker* v. *Blenkhorn*, 14 *App. Cas.* 1; 58 *L. J. Q. B.* 209; 59 *L. T.* 906; 37 *W. R.* 401.)

12. In cases where, under the previous portion of this Schedule, a solicitor would be entitled to charge a commission for negotiating a sale or mortgage, or for conducting a sale by auction, and he shall not charge such commission, then he shall be entitled to charge the rates allowed in the first column on all transactions up to 2,000*l.*, and to charge in addition those allowed by the second column on all amounts above 2,000*l.*, and not exceeding 5,000*l.*, and further to charge those allowed by the third column on all amounts above 5,000*l.* and not exceeding 50,000*l.*, instead of the rates allowed up to the amounts mentioned in those columns respectively.

PART II. (FIRST SCALE.)

Scale of Charges as to Leases, or Agreements for Leases, at Rack Rent (other than a Mining Lease, or a Lease for Building Purposes, or Agreement for the same).

Lessor's solicitor for preparing, settling, and completing lease and counterpart:—

Where the rent does not exceed 100*l.* ...	7*l.* 10*s.* per cent. on the rental, but not less in any case than 5*l.*
Where the rent exceeds 100*l.* and does not exceed 500*l.*	7*l.* 10*s.* in respect of the first 100*l.* of rent, and 2*l.* 10*s.* in respect of each subsequent 100*l.* of rent.
Where the rent exceeds 500*l.*	7*l.* 10*s.* in respect of the first 100*l.* of rent, 2*l.* 10*s.* in respect of each 100*l.* of rent up to 500*l.*, and 1*l.* in respect of every subsequent 100*l.*
Lessee's solicitor for perusing draft and completing	One-half of the amount payable to the lessor's solicitor.

DECISIONS ON PART II. (FIRST SCALE).

Negotiations which lead up to, and the preparation of the agreement which may precede, an actual lease are included in the scale fee and cannot be separately charged for (*Re Emanuel and Simmonds*, 33 *Ch. D.* 40; 55 *L. J. Ch.* 710; 55 *L. T.* 79; 34 *W. R.* 613; 51 *J. P.* 22; *Savery* v. *Enfield Local Board*, [1893] *A. C.* 218; 62 *L. J. Ch.* 674; 68 *L. T.* 722; 57 *J. P.* 581; 42 *W. R.* 33; 1 *R.* 160); *but negotiations carried on with persons other than the person to whom the lease is eventually granted are not covered by the scale.* (*Re Martin*, 41 *Ch. D.* 381; 58 *L. J. Ch.* 478; 60 *L. T.* 555; 37 *W. R.* 497.) *Where a form of lease has been settled the scale charges do not apply to subsequent leases following that form.* (*Wellby* v. *Still*, [1894] 3 *Ch.* 641; 63 *L. J. Ch.* 931; 71 *L. T.* 426; 43 *W. R.* 73; 8 *R.* 658.)

The scale applies to agreements for tenancy for less than three years. (*Re Negus*, [1895] 1 *Ch.* 73; 64 *L. J. Ch.* 79; 71 *L. T.* 716; 43 *W. R.* 68; 13 *R.* 85.)

(SECOND SCALE.)

Scale of Charges as to Conveyances in Fee, or for any other Freehold Estate, reserving rent, or Building Leases reserving rent, or other Long Leases not at Rack Rent (except Mining Lease) or Agreements for the same respectively.

Vendor's or lessor's solicitor for preparing, settling, and completing conveyance and duplicate, or lease and counterpart:—

Amount of Annual Rent.	Amount of Remuneration.
Where it does not exceed 5*l.* ...	5*l.*
Where it exceeds 5*l.*, and does not exceed 50*l.*	The same payment as on a rent of 5*l.*, and also 20 per cent. on the excess beyond 5*l.*
Where it exceeds 50*l.*, but does not exceed 150*l.*	The same payment as on a rent of 50*l.* and 10 per cent. on the excess beyond 50*l.*
Where it exceeds 150*l.*	The same payment as on a rent of 150*l.*, and 5 per cent. on the excess beyond 150*l.*

Where a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

Purchaser's or lessee's solicitor perusing draft and completing	for ...	One-half of the amount payable to the vendor's or lessor's solicitor.

Rules applicable to Part II. of Schedule I. as to all Leases or Conveyances at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor, and Decisions.

1. Where the vendor or lessor furnishes an abstract of title, it is to be charged for according to the present system as altered by Schedule II.

2. Where a solicitor is concerned for both vendor and purchaser, or lessor and lessee, he is to charge the vendor's or lessor's solicitor's charges, and one-half of that of the purchaser's or lessee's solicitor.

3. Where a mortgagee or mortgagor joins in a conveyance or lease, the vendor's or lessor's solicitor is to charge 1*l.* 1*s.* extra.

4. Where a party other than a vendor or lessor joins in a conveyance or lease, and is represented by a separate solicitor, the charges of such separate solicitor are to be dealt with under the old system as altered by Schedule II.

5. Where a conveyance or lease is partly in consideration of a money payment or premium, and partly of a rent, then, in addition to the remuneration hereby prescribed in respect of the rent, there shall be paid a further sum equal to the remuneration on a purchase at a price equal to such money payment or premium.

6. Fractions of 5*l.* are to be reckoned as 5*l.*

DECISIONS ON PART II. (SECOND SCALE).

Rule 5 *applies even though no abstract of the lessor's title has been furnished to the lessee.* (*Re Robson,* 45 *Ch. D.* 71; 59 *L. J. Ch.* 627; 63 *L. T.* 372; 38 *W. R.* 556.)

A lessor's solicitor is not entitled to charge a further fee for negotiating in addition to the scale fee in respect of rent. (*Re Horn and Francis,* [1896] 2 *Ch.* 797; 66 *L. J. Ch.* 15; 75 *L. T.* 370; 45 *W. R.* 72.)

SCHEDULE II.

[*In respect of all business the remuneration for which is not prescribed by Schedule I., the remuneration is to be regulated by the old system as altered by Schedule II.*]

By the Solicitors' Remuneration Act General Order, 1919, one-third was added to the charges in this Schedule, in respect of business transacted since 1st September, 1919.

By the Solicitors' Remuneration Act General Order, 1920, the remuneration for work comprised in this Schedule may at the solicitor's option be a gross sum, subject to the right of the client to require detailed charges within one month after payment or twelve months after the delivery of the bill, whichever date is later.

Instructions for, and drawing and perusing Deeds, Wills and other Documents.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and reasonable. In ordinary cases, as to drawing, &c., the allowance shall be—

		Before 1st Sept., 1919.				Since 1st Sept., 1919.		
		£	*s.*	*d.*		£	*s.*	*d.*
For drawing ...	per folio	0	2	0	...	0	2	8
For engrossing...	,, ,,	0	0	8	...	0	0	10⅔
For fair copying	,, ,,	0	0	4	...	0	0	5⅓
For perusing ...	,, ,,	0	1	0	...	0	1	4

Attendances.

In ordinary cases	0	10	0	...	0	13	4

Abstracts of Title (where not covered by the above scales).

Drawing each brief-sheet of 8 folios	0	6	8	...	0	8	10⅔
Fair copy	0	3	4	...	0	4	5⅓

Journeys from Home.

	£ s. d.		£ s. d.
In ordinary cases for every day of not less than 7 hours employed on business or in travelling	5 5 0	...	7 0 0
Where a less time than 7 hours is so employed, per hour ...	0 15 0	...	1 0 0

In extraordinary cases, the taxing master may increase or diminish the above allowance if for any special reasons he shall think fit.

DECISIONS.

Schedule II. is not exhaustive, but provides only in respect of certain matters a change in the actual amount of charges to be made. It leaves untouched a very large class of business which is to be paid for according to the old system. (*Parker* v. *Blenkhorn*, 14 *App. Cas.* 1; 58 *L. J. Q. B.* 209; 59 *L. T.* 906; 37 *W. R.* 401.)

Abstracts of title are not included in the words "other documents" in Schedule II., but the charge for perusing them is 6*s.* 8*d. for three brief-sheets of eight folios each* (*Re Parker*, 29 *Ch. D.* 199; 54 *L. J. Ch.* 959; 52 *L. T.* 686; 33 *W. R.* 541). *A case for the opinion of counsel is, however, so included.* (*Re Mahon*, [1893] 1 *Ch.* 507; 62 *L. J. Ch.* 448; 68 *L. T.* 189; 41 *W. R.* 257.)

An attendance of a solicitor for a merely formal purpose, such as delivering papers at counsel's chambers, is not an attendance within the meaning of Schedule II., and the practice of taxing masters to allow a fee of 3*s.* 4*d. for such attendance is correct.* (*Re Mahon*, [1893] 1 *Ch.* 507; 62 *L. J. Ch.* 448; 68 *L. T.* 189; 41 *W. R.* 257.)

The extraordinary cases referred to in Schedule II. are not only more difficult, but also less difficult, cases than the average; but the discretion of the taxing master must only be exercised for special reasons. (*Re Mahon*, [1893] 1 *Ch.* 507; 62 *L. J. Ch.* 448; 68 *L. T.* 189; 41 *W. R.* 257.)

APPENDIX F.

Precedents of Summonses under Vendor and Purchaser Act.

1.

(i) Formal Parts.

19 . [*Here put letter and number.*]

In the High Court of Justice,
Chancery Division.
Mr. Justice .

In the matter of the contract dated the day of 19 , for the sale of real [*or leasehold*] estate at in the county of , made between [*vendor*] and [*purchaser*]

and

In the matter of the Vendor and Purchaser Act, 1874.

Let of in the county of , within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of , in the county of , for an order that [*state the object of the application, as in forms below*].

Dated the day of 19 .

This summons was taken out by of , solicitor for the above-named .

The respondent may appear hereto by entering appearance either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Note.—If the respondent does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

2.

(ii) VENDOR'S SUMMONSES.

[*Formal parts as in Form* 1.]

1. That it may be declared the requisitions Nos. and of the said [*purchaser*] in respect of the title to the hereditaments comprised in the above-mentioned contract have been sufficiently answered by the applicant, and that a good title to the said hereditaments has been shown in accordance with the contract [*or particulars and conditions of sale*] (*a*).

2. That the said [*purchaser*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

3.

[*Formal parts as in Form* 1.]

1. That it may be declared that the said [*purchaser*] is precluded by clause of the above-mentioned contract [*condition of sale No.*] from making or raising the requisition or objection No. delivered by him in respect of the title to the hereditaments comprised in the said contract for sale, and that a good title to the said hereditaments has been shown in accordance with the contract [*or particulars and conditions of sale*] (*a*).

2. That the said [*purchaser*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

(*a*) As to latter part of declaration asked, see observations of Kekewich, J., *Re Wallis & Barnard's Contract*, [1899] 2 Ch. 515, at p. 519; 68 L. J. Ch. 753; 81 L. T. 382; 48 W. R. 57.

4.

[*Formal parts as in Form* 1.]

1. That it may be declared that the applicants [as trustees of the will of , deceased], have power without the concurrence of any other persons to sell the hereditaments comprised in the above-mentioned contract.

2. That the said [*purchaser*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

5.

(iii) PURCHASER'S SUMMONSES.

[*Formal parts as in Form* 1.]

1. That it may be declared that the requisitions Nos. and delivered by the applicant in respect of the title to the hereditaments comprised in the above-mentioned contract for sale have not been sufficiently answered by the above-named [*vendor*].

2. That the said [*vendor*] may be ordered to repay to the applicant the deposit of £ paid under the said contract, with interest thereon at the rate of 4 per cent. per annum from the date of payment and the costs of and incidental to the investigation of the title to the said hereditaments.

3. That the said [*vendor*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

6.

[*Formal parts as in Form* 1.]

1. That it may be declared that the applicant is not precluded by clause of the said contract for sale [*or, No. of the conditions of sale*] of the hereditaments contracted to be sold or otherwise from making a requisition [*state effect of requisition*].

2. That it may be declared that a good title has not been shown to the said hereditaments in accordance with the said contract, and that the said [*vendor*] may be ordered to repay to the applicant the deposit of £ paid under the said contract, with interest thereon at the rate of 4 per cent. per annum from the date of payment and the costs of and incidental to the investigation of title to the said hereditaments.

3. That the said [*vendor*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

7.

[*Formal parts as in Form* 1.]

1. That it may be declared that the [*lease dated the day of*] in the above-mentioned contract referred to contains onerous and unusual conditions, the existence of which was not disclosed to or known by the applicant before the said contract was entered into by him, in consequence whereof the applicant is entitled to have the said contract rescinded.

2. And that the said [*vendor*] may be ordered to repay to the applicant the deposit of £ paid under the said contract, with interest thereon at the rate of 4 per cent. per annum from the date of payment and the costs of and incidental to the investigation of the title to the said hereditaments.

3. That the [*vendor*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

8.

[*Formal parts as in Form* 1.]

1. That it may be declared that under the above-mentioned contract for sale the above-named [*vendor*] is liable for and ought to pay, commute, or otherwise provide for the succession duty which will become payable on the death of A. B.

2. That the said [*vendor*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

9.

[*Formal parts as in Form* 1.]

1. A declaration that under the above-mentioned contract the said [*vendor*] is not, in the events which have happened, at liberty to rescind the said contract for sale of the hereditaments comprised therein.

2. A declaration that the said [*vendor*] has not shown a good title to the said hereditaments in accordance with the said contract.

3. That the said [*vendor*] may be ordered to repay to the applicant the deposit of £ paid by him under the said contract, with interest thereon at the rate of 4 per cent. per annum from the date of payment, together with the costs of and incidental to the investigation by the applicant of the title to the said hereditaments.

4. That the said [*vendor*] may be ordered to pay the costs of this application.

[*Conclude as in Form* 1.]

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